

No. 12530

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United States  
Court of Appeals  
for the Ninth Circuit.

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NICK W. MAROOSIS,

Appellant,

vs.

JAMES G. SMYTH, United States Collector of  
Internal Revenue,

Appellee.

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Transcript of Record

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Appeal from the United States District Court,  
Northern District of California,  
Southern Division.

FILED

JUL 24 1950

PAUL P. O'BRIEN,

CLERK



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## NAMES AND ADDRESSES OF ATTORNEYS

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San Francisco, California,

Attorney for Defendant and Appellee.

In the United States District Court for the Northern  
District of California, Southern Division

No. 28965-R

NICK W. MAROOSIS,

Plaintiff,

vs.

JAMES G. SMYTH, United States Collector of  
Internal Revenue for the First Collection Dis-  
trict of California,

Defendant.

COMPLAINT TO RECOVER LIQUOR FLOOR  
TAXES ILLEGALLY COLLECTED

Comes now the plaintiff above-named and for  
cause of action against the defendant above-named  
alleges as follows:

I.

This action arises under the Internal Revenue  
Laws of the United States; it is brought pursuant to  
the provisions of Section 24 of the Judicial Code,  
U.S.C. Title 28, Section 41(5).

II.

That plaintiff is a resident of the City and County  
of San Francisco, State of California, and is en-  
gaged in business therein. San Francisco is in the  
Northern District of California, Southern Division.



## III.

That the defendant was at all times since May 14, 1945, to the time of the institution of this proceeding, the duly appointed, qualified and acting United States Collector of Internal Revenue for the First Internal Revenue Collection District of the State of California, and is a resident of the said Northern District of California, Southern Division.

## IV.

That on May 1, 1944, plaintiff duly filed his return of floor stocks tax on distilled spirits, malt liquors, and wines as of April 1, 1944, as required by the Revenue Act of 1943. That said return was made on two reports, one showing a tax liability of \$2,749.75 and the other \$3,000.00 or a total tax liability of \$5,749.75. That this return included three stores owned by the plaintiff at 2066 Fillmore Street, 499 Haight Street, and 458 Geary Street, all of San Francisco, California. That the return, in part, showed distilled spirits of 1,713.038 proof gallons of which 1,330.36 represented the proof gallonage at the 458 Geary Street store. That said tax, in addition to \$40.08 representing the tax on merchandise at a fourth store located at 4178 Mission Street, San Francisco, California, or a total of \$5,789.83, was duly paid on July 1, 1944, to Harold A. Berliner, the then Collector of Internal Revenue for the First District of California. That thereafter additional floor stocks taxes in the amount of \$3,744.74 were assessed on the plaintiff as of April 1, 1944,

upon an alleged under-declaration of the inventory of distilled spirits in the 458 Geary Street store. As well an ad valorem penalty of \$4,733.91 was assessed. Said additional assessment in the amount of \$8,478.65 together with interest thereon in the amount of \$1,397.74 aggregating a total of \$9,876.39 was paid by plaintiff to the defendant in installments between June 15, 1946, and February 2, 1948.

#### V.

That this action is filed to recover the payment of \$9,876.39 plus interest on the grounds that said assessment was completely erroneous and illegal and was protested by plaintiff before payment was made. That the Revenue Act of 1943 imposed a tax on the inventory of all distilled spirits, malt liquors and wines which were on April 1, 1944, owned by a taxpayer and held for sale. The additional assessment was erroneous and illegal because the taxpayer did, on April 1, 1944, take an actual physical inventory of distilled spirits, malt liquors and wines; that said inventory was true and correct and the return duly filed as set forth in Paragraph IV was a true and correct reporting of said inventory and the tax due on said inventory which was duly paid was the true and correct amount due and owing.

#### VI.

That duly authorized agents and representatives of the Alcohol Tax Unit of the Bureau of Internal Revenue took a physical inventory of the plaintiff's stock in his store at 458 Geary Street, San Fran-

cisco, California, as of May 2, 1944, and by adjusting this inventory back to April 1, 1944, their own computations disclosed that the amount declared for distilled spirits by plaintiff exceeded the actual distilled spirits on hand as of April 1, 1944.

## VII.

That in complete disregard of the physical inventory taken by the taxpayer on April 1, 1944, which inventory was true and correct and in further complete disregard of the physical inventory taken by the agents and representatives of the Alcohol Tax Unit on May 2, 1944, and by them adjusted back to April 1, 1944, and in complete disregard of their own computations, that said physical inventory so taken by them and so adjusted back by them disclosed that the return of the plaintiff on May 1, 1944, was true and correct and that the tax paid thereon was the correct tax due and owing, an examining officer of the Alcohol Tax Unit proceeded to compute an estimated inventory for the 458 Geary Street store belonging to plaintiff and computed an estimated inventory based on groundless assumptions, erroneous computations, not based on fact or logic and thereafter assessed the additional tax and penalty herein sued for.

## VIII.

The calculation of this examining officer can be summarized as follows:

Inventory of proof gallons of distilled spirits on hand at date of previous filing of Form 758,

November 1, 1942.....631.93 Proof Gal.  
Add:

Distilled Spirits purchases November 1,  
1942, to March 31, 1944.....12,944.74 Proof Gal.

13,576.67 Proof Gal.

Deduct:

Sales in proof gallons for the period  
November 1, 1942, to March 31, 1944.....11,023.46 Proof Gal.

Computed inventory, April 1, 1944..... 2,553.21 Proof Gal.

Inventory reported on Form 758 as of  
April 1, 1944, for 458 Geary Street store..... 1,330.36 Proof Gal.

Alleged under-declaration ..... 1,222.85 Proof Gal.

The sum of 1,222.85 proof gallons multiplied by \$3.00 per proof gallon equals \$3,668.55. To this figure, the examining officer added \$76.19 for which no explanation was furnished taxpayer, yielding a tax deficiency of \$3,744.74. To this was added a penalty of 50 per cent of the total tax or an amount of \$4,733.91, resulting in a total assessment of \$8,478.65.

## IX.

That the arbitrary assessment herein sued for is incorrect and illegal by reason of the fact that it is contrary to the actual physical inventory taken by the United States Alcohol Tax Unit on May 2, 1944, and adjusted back to April 1, 1944, and is contrary to the true and correct inventory taken by the plaintiff and reported to the Bureau of Internal Revenue

as set forth in Paragraph IV; that the said arbitrary assessment is also based upon incorrect data. The sales in proof gallons are shown as 11,023.46. They should have been shown as 12,404.20 proof gallons. This would result in a computed inventory at April 1, 1944, of 1,172.47 proof gallons which is less than the 1,330.36 proof gallons reported by the taxpayer. As well, the entire analysis is based on unsupported assumptions contrary to fact.

### X.

That the fraud penalty levied and assessed and collected by the defendant is invalid in that the tax assessment of \$3,744.74 is based on artificial bases and illegal grounds and constitutes no basis for the application of a penalty for fraud; that said penalties for fraud are limited to deficiencies due to fraud with intent to evade the tax; that plaintiff has during all of the times herein referred to denied the existence of any deficiency and questioned the arbitrary assessment and denied the existence of any deficiency for floor tax, denied any fraudulent intent to exceed the tax and still so denies the existence of any such fraudulent intent.

### XI.

Plaintiff duly filed his claim for refund of said payment of \$9,876.39. Said claim was made and filed in accordance with the provisions of the law in that regard and the regulations of the Secretary of the Treasury established in pursuance thereof, and alleged as the basis for said claim the same grounds and facts hereinbefore alleged and herein relied

upon. That copy of said claim is attached hereto as Exhibit "A," incorporated herein and made a part hereof as though set forth at this point word for word.

## XII.

That at the time of the filing of the said claim for refund, to-wit: Exhibit "A," plaintiff's agent handling said matter was advised by the office with which said claim was filed that in due course an agent would discuss this matter with the said agent of the plaintiff in an effort to determine the correctness of said claim and that no action would be taken thereon without such a conference; that it has become by usage and common practice between the Commissioner of Internal Revenue and certified public accountants generally that such claims for refund are not rejected unless such a conference is first had.

That without such a conference being called or had, on February 15, 1949, said claim for refund filed as alleged in Paragraph XI hereof was rejected and disallowed in full by the Commissioner of Internal Revenue. That notice of the rejection and disallowance of said claim for refund was mailed to plaintiff by registered mail by said Commissioner on February 15, 1949.

## XIII.

That no part of said sum of \$9,876.39 erroneously and illegally collected from the plaintiff by defendant, as aforesaid, has been repaid or refunded, and said sum of \$9,876.39, together with interest



thereon as provided by law, is due, unpaid and owing to the plaintiff from the defendant.

Wherefore, plaintiff prays that it have and recover of and from the defendant the sum of \$9,-876.39, together with interest thereon, as provided by law, and costs of suit incurred herein, and for such other and further relief as the Court may deem just and proper in the premises.

/s/ MORRIS M. GRUPP,

/s/ LEON SCHILLER,

Attorneys for Plaintiff.

State of California,

City and County of San Francisco—ss.

Nick W. Maroosis being first duly sworn deposes and says:

That he is the plaintiff in the above-entitled action; that he has read the foregoing complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief and as to those matters he believes it to be true.

/s/ NICK W. MAROOSIS.

Subscribed and sworn to before me this 16th day of June, 1949.

[Seal] /s/ LOUIS WIENER,

Notary Public in and for the City and County of San Francisco, State of California.

## EXHIBIT "A"

## Claim

To Be Filed With the Collector Where Assessment Was  
Made or Tax Paid

The Collector will indicate in the block below the kind of claim filed, and fill in the certificate on the reverse side.

- [X] Refund of Taxes Illegally, Erroneously, or Excessively Collected.
- [ ] Refund of Amount Paid for Stamps Unused, or Used in Error or Excess.
- [ ] Abatement of Tax Assessed (not applicable to estate, gift, or income taxes).

State of California }  
County of San Francisco } ss :

Name of taxpayer or purchaser of stamps Nicholas W. Maroosis  
Business address 2066 Fillmore Street, San Francisco, California.  
Residence .....

The deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below are true and complete :

1. District in which return (if any) was filed 1st District—Calif.
2. Period (if for income tax, make separate form for each taxable year) April 1, 1944.
3. Character of assessment or tax Alcohol Floor Stocks Tax.
4. Amount of assessment, \$ \* ; dates of payment \*.
5. Date stamps were purchased from the Government.....
6. Amount to be refunded \$9,876.39, or such greater amount as is legally refundable.
7. Amount to be abated (not applicable to income, gift, or state taxes) .....
8. The time within which this claim may be legally filed expires, under Section 3313 Internal Revenue Code, on June 15, 1950.

The deponent verily believes that this claim should be allowed for the following reasons :

\* See statement attached.

The attached statement constitutes a part of this claim for refund and it is duly sworn to in this affidavit as a part hereof.

Signed /s/ NICHOLAS W. MAROOSIS

Sworn to and subscribed before me this 6th day of August, 1948.

/s/ FRED T. AINSLIE.

(Signature of officer administering oath)

## Certificate

[No data filled in.]



Nicholas W. Maroosis  
2066 Fillmore Street, San Francisco, California

## Statement

1. The amounts of assessment and dates of payment are set forth as follows:

## Assessments:

May 1, 1944—Original return, Form 758.....	\$ 2,749.75
May 1, 1944—Amended (supplemental) return, Form 758....	3,000.00
Tax on distilled spirits at 5178 Mission Street, San Francisco, paid on July 1, 1944, without receipt of notice of assess- ment. See tabulation of August 8, 1945, by J. H. Maloney..	40.08

Total assessed originally.....\$ 5,789.83

April 21, 1945—Additional assessment of floor stocks tax and  
and penalty was made based upon a computed inventory  
figure which was determined by using a preceding inven-  
tory, adding purchases and deducting sales, and assuming  
that distilled spirits sales amounted to 86% of total sales.  
The additional assessment was first computed at a total of  
\$10,498.81.

April 26, 1945—A claim for abatement was filed by the tax-  
payer in the amount of \$10,498.81.

March 12, 1946—An amended bill was issued based upon the  
same method of computation as that used in the April 21,  
1945, assessment, but with certain errors in calculation re-  
moved. The amended bill was in the amount of.....\$ 8,478.65

Total of original and additional assessments.....\$14,268.48

Under date of April 5, 1946, a Warrent of Distress was issued against  
the taxpayer. In order to continue the orderly operation of his business,  
the taxpayer was forced to sign an agreement to pay the additional as-  
sessment and interest thereon from April 21, 1945, at the rate of \$500.00  
per month beginning June 15, 1946. Payments were made under pro-  
test, and on the dates and in the amounts listed below:

## Payments:

Payment of the original assessments were made as follows:

Date of Check	Month Returned by Bank	Check No.	Collector's Reference No.	Amount Paid
July 1, 1944	July, 1944	692	4131	\$ 579.61
July 1, 1944	July, 1944	1517	4131	4,182.45
July 1, 1944	July, 1944	1703	4131	987.69
July 1, 1944	July, 1944	1518	4773	40.08

Total of payments on July 1, 1944.....\$ 5,789.83

Payment of the additional assessments was made as follows:

Date of Check	Month Returned by Bank	Check No.	Collector's Reference No.	Amount Paid
June 15, 1946	June, 1946	3069	1957	\$ 500.00
July 15, 1946	July, 1946	3118	2501	500.00
Aug. 19, 1946	Sept., 1946	1015	3672 and 3846	500.00
Sept. 27, 1946	Nov., 1946	1074	5429	500.00
Oct. 26, 1946	Nov., 1946	1135	5564	500.00
Dec. 11, 1946	Dec., 1946	1236	6726	500.00
Dec. 23, 1946	Feb., 1947	1256	7249	500.00
Feb. 27, 1947	Apr., 1947	1348	9580	500.00
Apr. 15, 1947	May, 1947	1449	10880	500.00
Apr. 15, 1947	May, 1947	1450	10542	500.00
June 10, 1947	July, 1947	1546	98	500.00
June 16, 1947	July, 1947	1551	98	500.00
July 22, 1947	Aug., 1947	1604	1131	500.00
Sept. 2, 1947	Oct., 1947	1719	2713	500.00
Oct. 15, 1947	Nov., 1947	1800	3500	500.00
Nov. 6, 1947	Dec., 1947	1837	4250	500.00
Dec. 23, 1947	Jan., 1948	1927	4881	500.00
Jan. 19, 1948	Feb., 1948	1971	5173	500.00
Feb. 2, 1948	Feb., 1948	2022	5437	876.39

Total of payments made on the additional assessments, and interest charges.....	\$ 9,876.39
---	-------------

Total of all payments made by the taxpayer incident to the floor stocks tax assessments .....	\$15,666.22
---	-------------

## 2. Grounds upon which this claim is based:

This claim for refund is filed in order to recover, with interest, the amount of an additional assessment of floor stocks tax and penalty, \$8,-478.65, and interest thereon, \$1,397.74, aggregating in total \$9,876.39. This sum was paid by the taxpayer under protest, and the grounds upon which a refund of the entire amount is claimed are set forth below:

The taxpayer on April 1, 1944, took an actual physical inventory of distilled spirits, malt liquors, and wines and filed proper returns on May 1, 1944, disclosing total tax due in the amount of \$5,749.75. Included in the return were distilled spirits amounting to 1,713.038 proof gallons, of which 1,330.36 represented the total gallonage at 458 Geary Street, San Francisco, where one of his four places of business was operated under the name of Joseph's Liquor Store. Subsequently floor stocks tax at the rate of \$3.00 per gallon was paid on July 1, 1944, as

shown above, along with payment of other floor stocks tax due on beers and wines.

On May 2, 1944, an actual physical inventory of Joseph's Liquor Store stocks was taken by representatives of the Alcohol Tax Unit, and the result of adjusting this inventory back to April 1, 1944, disclosed the following:

Distilled spirits on hand per A.T.U.	
physical inventory of May 2, 1944.....	1,029.37 pg.
In warehouse .....	912.00
	<hr/>
Total.....	1,941.37 pg.
Purchases, April, per invoices.....	1,106.55 pg.
Less sales for same period.....	386.57
	<hr/>
Balance, excess of purchases over sales.....	719.98
	<hr/>
Difference, would be on hand April 1, 1944.....	1,221.39 pg.
	<hr/> <hr/>

This amount compared with the total of 1,330.36 pg. declared for Joseph's Liquor Store on returns filed for April 1, 1944, reflects an over-declaration in the amount of 108.97 pg.

In complete disregard of the physical inventory taken by the taxpayer on April 1, 1944, and of the physical inventory taken on May 2, 1944, by representatives of the Alcohol Tax Unit and adjusted back to April 1, 1944, the examining officer from the Alcohol Tax Unit proceeded to compute an estimated inventory based on various assumptions and use the figures thus obtained as a basis for assessing additional tax and penalty. The computation used by the examining officer, after eliminating various errors in calculation was essentially as follows:

#### Inventory in proof gallons:

Inventory of proof gallons on hand at date of previous filing of Form 758, November 1, 1942.....	631.93 pg.
Add—Distilled spirits purchases November 1, 1942, to March 31, 1944, per Alcohol Tax Unit audit of invoices in wholesale liquor dealers' files.....	12,944.74
	<hr/>
Total.....	13,576.67 pg.
Deduct—Sales in proof gallons, as computed below, for the period November 1, 1942, to March 31, 1944	11,023.46
	<hr/>
Computed inventory, April 1, 1944.....	2,553.21 pg.
Inventory reported in Form 758 as of April 1, 1944....	1,330.36
	<hr/>
Alleged under-declaration .....	1,222.85 pg.
	<hr/> <hr/>

## Sales in proof gallons :

Gross sales in dollars for the period November 1,  
1942, to March 31, 1944.....\$276,328.51

Equivalent in proof gallons :

Deduct State sales tax :

At 3% for the entire period November 1, 1942,  
to March 31, 1944 (this should have been at  
3% for the period November 1, 1942, to June  
30, 1943, and at 2½% for the period July 1,  
1943, to March 31, 1944) ..... 8,048.41

Net Sales .....\$268,280.10

Using the assumption that 86% of total sales were  
distilled spirits sales, the dollar value would be.....\$230,720.88

This figure is converted to proof gallons by dividing  
by \$20.93, the selling price per proof gallon as com-  
puted by the State Board of Equalization.

Sales in proof gallons,  $\$230,720.88 \div \$20.93$ ..... 11,023.46 pg.

## Computation of additional tax and penalty :

Tax due on Form 758 (includes \$9.43 correction per  
A.T.U. audit) .....\$ 5,799.26

Add—Alleged under-declaration, 1,222.85 pg.  
at \$3.00 ..... 3,668.55

Total.....\$ 9,467.81

Ad valorem penalty 50% of \$9,467.81..... 4,733.91

Alleged total assessment .....\$ 14,201.72

Deduct—Tax paid ..... 5,789.83

Balance .....\$ 8,411.89

Minor unidentified difference included in A.T.U.  
computation ..... 66.76

Amount of amended bill issued, March 12, 1946.....\$ 8,478.65

It should be noted in the foregoing computation of sales in terms of proof gallons that 86% of total sales were assumed to be distilled spirits sales. The figure of 86% and even lower percentages were applicable in earlier years in segregating total sales as between distilled spirits sales and other sales, but during the war years 1943 and 1944 the percentage of distilled spirits sales to total sales was much higher. The heavy increase in sales volume was in whiskey and other distilled spirits rather than in wine, beer, and miscellaneous items.

Instead of 86%, the examining officer should have used a percentage figure not lower than 96% in computing the proportion of sales represented by distilled spirits sales. In support of the higher percentage figure the taxpayer submits the following evidence of the applicability of the higher figure :

- (1) Attached as Exhibit "A" is a photostatic copy of a certified audit report prepared by W. E. Holcombe, an auditor of the California State Board of Equalization, covering an audit of the four quarterly periods ended June 30, 1944. This report was transmitted officially to the taxpayer on August 25, 1944, and it served as the basis for an additional license fee assessment of \$750.00 which was paid by the taxpayer.

The audit report states specifically on Line 6 of the back page that audited distilled spirits sales are 96.41% of gross sales.

Reported sales, as shown on the same page, were 60% to 86% of total sales. Upon receipt of the audit report, the taxpayer realized that the lower percentages used for reporting purposes, which were estimates based upon experience in prior years, were entirely too low. He therefore accepted the findings of the State auditor and paid the additional license which was assessed on the basis of the audit report.

- (2) As a further check on the accuracy of the higher percentage of distilled spirits sales to total sales, the taxpayer has made a complete analysis of all sales at the 458 Geary Street store for the three months' period, January 1 to March 31, 1944, the period immediately prior to April 1, 1944, which is the date of the inventory on which the tax is computed.

The total sales analyzed amounted at selling prices, exclusive of sales tax, to \$87,882.90; of this sum, distilled spirits sales were found to comprise a total of \$86,054.86 or 97.9%.

The regular quarterly sales and Use Tax Return submitted by the taxpayer to the California State Board of Equalization for the same three months ended March 31, 1944, reported total taxable sales of \$89,529.17 and tax due and paid at 2½% thereon in the amount of \$2,238.23. If the total figure of \$89,529.17 is compared with the positively identified distilled spirits sales amounting to \$86,054.86, the percentage of the latter to the total is found to be 96.1%.

In view of the foregoing, it is contended that any attempt to arrive at a computed inventory figure on April 1, 1944, by reference to an earlier inventory on November 1, 1942, with appropriate adjustments for purchases and sales during the intervening period of seventeen months between November 1, 1942, and April 1, 1944, in order to be reasonably accurate must reflect distilled spirits sales as representing at least 96% of total sales. The percentage of 96.41% established by an independent audit by a State employee covering the major portion of the sales during the period between the key inventory dates stands as the best evidence available for purposes of computation. A constructed inventory, using this figure of 96.41%, discloses the following :



## Inventory in proof gallons:

Inventory of proof gallons on hand at date of previous filing of Form 758, November 1, 1942 (not in dispute) .....	631.93 pg.
Add—Distilled spirits purchases November 1, 1942, to March 31, 1944, per Alcohol Tax Unit audit of invoices in wholesale liquor dealers' files (not in dispute) .....	12,944.74
Total.....	13,576.67 pg.
Deduct—Sales in proof gallons, as computed below, for the period November 1, 1942, to March 31, 1944..	12,404.20
Computed inventory at April 1, 1944.....	1,172.47 pg.
Inventory reported in Form 758 as of April 1, 1944, based on actual physical inventory taken.....	1,330.36
Overdeclaration on basis of computed inventory.....	157.89 pg.

## Sales in proof gallons:

Gross sales in dollars for the period November 1, 1942, to March 31, 1944 (not in dispute).....\$276,328.51

## Equivalent in proof gallons:

## Deduct State sales tax:

Sales 11/1/42 to 6/30/43—\$ 63,668.09 at 3% \$1,854.41

Sales 7/1/43 to 3/31/44— 212,660.42 at 2½% 5,186.84

Total.....	\$276,328.51	7,041.25
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Net sales .....	\$269,287.26
-----------------	--------------

Using the percentage of 96.41% as representing the proportion of distilled spirits sales to total sales, as developed by independent audit of State auditor, the dollar value of distilled spirits sales would be....\$259,619.85

Converting the dollar value to proof gallons at the selling price of \$20.93 (developed by the State Board of Equalization) the sales in proof gallons would be ..... 12,404.20 pg.

## Summary

The foregoing information submitted in support of this claim for refund is summarized as follows:

- (1) The taxpayer actually made an accurate count of inventory on hand at April 1, 1944; he filed appropriate returns on Form 758 when due on May 1, 1944, and paid the tax called for by the returns on July 1, 1944.
- (2) An Alcohol Tax Unit examining officer took a physical inventory on May 2, 1944, one month after the key date, and by adjustments

for purchases and sales during the intervening month reconstructed an inventory figure for April 1, 1944. The inventory thus computed was found to be approximately 109 proof gallons lower than the total which the taxpayer had declared on Forms 758.

- (3) In complete disregard of the evidence of the accuracy of the inventory shown on the returns, and of the findings of the check made on May 2, 1944, the examining officer arbitrarily and erroneously computed an inventory figure by taking a November 1, 1942, inventory figure, adding thereto purchases for the intervening seventeen months to April 1, 1944, and deducting from the sum thus obtained a portion of the sales, using the assumption that distilled spirits sales represented only 86% of total sales. By this computation an under declaration of 1,222.85 proof gallons was alleged, and to the revised total tax a 50% penalty was added.
- (4) The taxpayer submitted and now resubmits evidence consisting of the findings of an independent auditor of the California State Board of Equalization to the effect that distilled spirits sales for the year ended June 30, 1944, for this taxpayer at his 458 Geary Street store represented 96.41% of total sales.
- (5) The taxpayer has now made a detailed analysis of sales tickets for the three months' period immediately preceding the inventory date April 1, 1944. The analysis covered 98.2% of all sales for the three months; of the sales tickets analyzed, it was found that 97.9% represented distilled spirits sales.
- (6) In order to obtain further time in which to prove the accuracy of his original declaration, and in order to mitigate the effect of a warrant of distress and to continue the orderly operation of his business, the taxpayer was forced in 1946 to sign an agreement to pay the arbitrary additional assessment and interest at the rate of \$500.00 monthly. He has now completed these payments, and is filing this claim for the purpose of recovering in full with interest the amounts erroneously and illegally collected.

### Statement By Agent

This claim for refund was prepared by us on behalf of Messrs. John F. Forbes & Company, Crocker Building, San Francisco, California, from data obtained from the taxpayer and from his files and records. This information, while not known to be true, is true to the best of our knowledge and belief.

/s/ SCOTT H. DUNHAM.

/s/ CHARLES E. ROBINSON.

## Retail Distilled Spirits License Fee Audit Report

License Numbers C 4574 G

Licensee Nick W. Maroosis &amp; Michael M. Kosloff

DBA Joseph's

Address 458 Geary Street, San Francisco, 2, California

File No. 15787

Quarter Ending	Distilled Spirits Sales Reported	Distilled Spirits Sales Audited	Licensee Fee Paid	License Fee Required	Additional Fee Due
9/30/43 .....	\$ 17,633.51	\$ 26,413.23	\$ 180.00		
12/31/43 .....	58,675.58	87,890.15	590.00		
3/31/44 .....	60,566.48	90,722.53			
6/30/44 .....	14,441.52	21,631.95	750.00		
Totals.....	\$151,317.09x	\$226,657.86	\$1,520.00	\$2,270.00	\$750.00
Total Additional Fee Due \$750.00					

I Hereby Certify That I have audited the records of the above licensee for the period specified; and that in my opinion this report correctly reflects the license fee liability of said licensee for the periods stated.

/s/ W. E. HALCOMBE.

Dated August 23, 1944.

Approved by C. F. Wentworth.

Note: x Previously audited to 6-30-1943.

AC

3-14-44

## Audit Report

## Description of Operations

1. Type of Organization:  
Partnership.
2. Class of Business  
Retail Liquor Store.

## Audit

1. What method was used to arrive at audited sales?  
Cost of sales plus gross profit plus sales tax.
2. If on cost plus mark-up basis:
  - A. What percentage of mark-up was used? 33 1/3.
  - B. Were inventory fluctuations considered? Yes.
3. What procedure was followed to arrive at percentage of mark-up?  
Average gross profit realized from a number of items in licensees' stock.
4. Is "Computation of Mark-Up" schedule attached? No.
5. Are distilled spirits excise tax and sales tax included in audited sales? Yes.
6. Audited Distilled Spirits sales are 96.41% of gross sales.



Report

1. Method used by licensee to arrive at reported sales :  
Reported sales were 60 to 86% of total sales.
2. What instructions were given licensee relative to preparation of future reports? None—This is a close-out.

Records

1. Do records meet requirements of section 24.4 of the Alcoholic Beverage Control Act and the Rules and Regulations issued thereunder?  
Yes.

/s/ W. E. HOLCOMBE,  
Auditor.

Date August 23, 1944.

[Endorsed]: Filed June 22, 1949.

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[Title of District Court and Cause.]

ANSWER

The defendant herein, James G. Smyth, Collector of Internal Revenue for the First Collection District of California, appearing by his attorney Frank J. Hennessy, United States Attorney in and for the United States District Court for the Northern District of California, in answer to the allegations of the complaint herein, alleges, admits and denies as follows:

I.

The allegations contained in paragraph I are admitted.

II.

The allegations contained in paragraph II are admitted.

III.

The allegations contained in paragraph III are admitted.

## IV.

The allegations contained in paragraph IV are denied except that the defendant admits plaintiff filed the said tax return as alleged and paid the said taxes to the defendant as alleged and that thereafter the plaintiff paid the additional taxes and penalties assessed in the total amount of \$9,876.39.

## V.

The allegations contained in paragraph V are admitted except that the defendant denies the inventory as filed by the plaintiff was true and correct as to the quantities of distilled spirits subject to the payment of the additional taxes thereon; further answering the defendant denies that the amount of taxes paid by the plaintiff on plaintiff's inventory of distilled spirits on hand was the true and correct amount owed to the defendant.

## VI.

The allegations contained in paragraph VI are admitted except that the defendant alleges the changes and differences of the quantity of distilled spirits, as then computed by agents of the United States, was caused by errors and omissions in the records kept by the plaintiff at his place of business.

## VII.

The allegations contained in paragraph VII are denied except that the defendant admits that pursuant to a later and corrected inventory of distilled spirits subject to the additional taxes owed by the

plaintiff the said additional taxes and penalty, as later sued for, were assessed against the plaintiff.

#### VIII.

The allegations contained in paragraph VIII are admitted.

#### IX.

The allegations contained in paragraph IX are denied.

#### X.

The allegations contained in paragraph X are denied.

#### XI.

Answering paragraph XI, the defendant admits the said claim for refund was filed as therein alleged but denies the allegations therein.

#### XII.

Answering paragraph XII, the defendant admits the said claim for refund was disallowed by the Commissioner of Internal Revenue on February 15, 1949; further answering paragraph XII, the defendant alleges that the plaintiff, although repeatedly requested to do so, failed and refused to appear before agents of the United States, with his records, for a conference and discussion of his refund claim with said officers.

#### XIII.

The allegations contained in paragraph XIII are denied except that the defendant admits the said taxes of \$9,876.39, with interest, have not been refunded to the plaintiff.

Wherefore, the defendant having fully answered, prays that the suit be dismissed with costs to defendant.

/s/ FRANK J. HENNESSY,  
United States Attorney.

[Endorsed]: Filed August 18, 1949.

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[Title of District Court and Cause.]

### STIPULATION WAIVING JURY TRIAL

It Is Hereby Stipulated by and between counsel for the respective parties that the jury trial heretofore demanded in the above-entitled action is waived.

Dated: This 8th day of November, 1949.

/s/ LEON SCHILLER,

/s/ MORRIS M. GRUPP,  
Attorneys for Plaintiff.

FRANK J. HENNESSY,  
Attorney for Defendant.

/s/ C. ELMER COLLETT,  
Asst. U. S. Attorney.

[Endorsed]: Filed November 16, 1949.

[Title of District Court and Cause.]

NOTICE OF MOTION AND MOTION FOR  
RE-OPENING CASE

To The Defendant Above-Named And To Frank J.  
Hennessy, United States Attorney, Attorney  
For Defendant:

You, and Each of You, Will Please Take Notice that the plaintiff above-named will on Thursday, December 1, 1949, at the hour of 10:00 o'clock a.m. of said day, or as soon thereafter as counsel can be heard, move the above-entitled Court to re-open the trial of the above-entitled action for the purpose of introducing the testimony of David Dellari in line with the affidavit of the said David Dellari annexed to this motion.

Said motion will be made upon the ground that the information contained in the said affidavit of David Dellari was unknown to the plaintiff and the plaintiff had no reason for the knowledge thereof until the testimony of defense witness *of* Raymond C. Hedrick indicated that he followed a certain truck to the address of the said David Dellari; that the said witness Hedrick did not in said testimony advise the Court of his further investigation of the said address nor of his discussions and investigation as set forth in the affidavit hereto annexed; that the information contained in said affidavit is material to the issues of this case on behalf of plaintiff.

This motion is being made upon all the testimony, records and files in the above-entitled action and

upon the affidavit of the said David Dellari hereto annexed and upon such oral testimony as may be adduced at the time of the hearing of this motion.

Dated: This 25th day of November, 1949.

LEON SCHILLER, ESQ.,

MORRIS M. GRUPP, ESQ.,

By .....,

Attorneys for Plaintiff.

[Endorsed]: Filed November 26, 1949.

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[Title of District Court and Cause.]

AFFIDAVIT OF DAVID DELLARI

State of California,

City and County of San Francisco—ss.

David Dellari, being first duly sworn, upon oath, deposes and says:

That he has been for several years last past the owner of those certain premises known as 1348-50 San Bruno Avenue, San Francisco, California, and was the owner of the said premises during the months of March and April of 1944; that for approximately two years prior to April 1, 1944, and for several months thereafter your affiant rented space in the garage in the premises aforementioned to two individuals, one Tommy Riggs and one Frank O'Connor; that the said Tommy Riggs rented the



space in said garage for the purpose of storing therein his automobile; that Frank O'Connor rented space in said garage for the purpose of storing therein his truck and also as a storage place for pinball machines; that during the month of March and around the 1st of April, 1944, the said O'Connor was so storing pinball machines in said garage, that on or about the 1st day of April, 1944, three men from the Alcohol Tax Unit, Department of Internal Revenue of the United States, called on your affiant and requested permission of your affiant to examine the said garage to determine whether there was any whiskey stored therein, which said whiskey your affiant was informed was subject to floor stock tax; that your affiant accompanied the said three men from the Alcohol Tax Unit to his garage and there they examined the said garage and found therein pinball machines there stored belonging to O'Connor but there was no whiskey or any evidence of there having been any whiskey stored therein.

That thereafter upon the request of the said agents of the Alcohol Tax Unit your affiant together with Frank O'Connor called at the Alcohol Tax Unit at 100 McAllister Street in the City and County of San Francisco, State of California, where they were questioned by agents of that department relative to delivery of whiskey to the said premises; that both your affiant and the said O'Connor denied any knowledge of any such delivery of whiskey to the said premises.

That at the time aforementioned, to-wit: April 1, 1944, when the three agents of the Alcohol Tax Unit

called at the home of your affiant at 1348 San Bruno Avenue, your affiant informed the said agents that the said garage was rented to the said Tommy Riggs and Frank O'Connor.

That your affiant does not know any of the parties to the above-entitled action and met the plaintiff above-named for the first time so far as he remembers on November 21, 1949, at approximately 5:00 o'clock p.m. when the said plaintiff called at your affiant's home and questioned him relative to the occupants of his garage at the premises aforementioned on the dates aforementioned.

/s/ DAVID DELLARI,

1348 San Bruno Avenue,  
City.

Subscribed and sworn to before me this 23rd day of November, 1949.

[Seal]     /s/ LOUIS WIENER,  
Notary Public in and for the City and County of  
San Francisco, State of California.

[Endorsed]: Filed November 26, 1949.

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[Title of District Court and Cause.]

### STIPULATION

It Is Hereby Stipulated by and between Morris M. Grupp, Esq., and Leon Schiller, Esq., Attorneys for Plaintiff in the above-entitled matter, and Frank



J. Hennessy, Esq., United States Attorney, appearing herein on behalf of the defendant, as follows, to-wit:

1. That the gross sales exclusive of sales tax as reflected on the books of the plaintiff for his store known as Joseph's Liquor Store, 458 Geary Street, San Francisco, California, between the dates of November 1, 1942, to June 30, 1943, is the sum of.....\$ 61,813.68

2. That the gross sales exclusive of sales tax as reflected on the books of the plaintiff for his store known as Joseph's Liquor Store, 458 Geary Street, San Francisco, California, between the dates of July 1, 1943, to March 31, 1944, is the sum of.....\$207,473.58

3. That if the Court finds from the evidence that 86 per cent of the gross sales between the period of November 1, 1942, to June 30, 1943, were sales of distilled spirits that the sales of distilled spirits for the period from November 1, 1942, to June 30, 1943, would be..... 53,159.76

4. That if the Court finds from the evidence that 96.41 per cent of the gross sales between the period of July 1, 1943, to March 31, 1944, were sales of distilled spirits that the sales of distilled spirits for the period from July 1, 1943, to March 31, 1944, would be..... 200,025.28

5. That the total distilled spirits sales for the period from November 1, 1942, to March 31, 1944, would be.....\$253,185.04

6. If the Court finds that the selling price per proof gallon is the sum of \$20.93 that the total sales of distilled spirits in the sum of \$253,185.04 would equal.... 12,096.75  
proof gal.

7. That the assessment in question in this action listed the total proof gallons sold from November 1, 1942, to March 31, 1944, as..... 11,023.46  
proof gal.

8. That if all of the above percentage figures are found by the Court to be the correct percentages to be used in calculation that the assessment herein in question understated the number of proof gallons sold by the plaintiff by..... 1,073.29  
proof gal.

9. That the assessment herein in question assessed the plaintiff for an understatement of..... 1,222.85  
proof gal.

10. Additional proof gallons sold by plaintiff as above set forth..... 1,073.29  
proof gal.

11. Using the method of calculation on a percentage basis adopted by the Alcohol Tax Unit in checking distilled

spirits on hand as of April 1, 1944, in possession of plaintiff at his 458 Geary Street store such percentage calculations would determine an understatement by plaintiff in his return of..... 149.56  
proof gal.

12. It Is Further Stipulated that it is the consensus of opinion of the certified public accountants of the plaintiff and the investigators for the Alcohol Tax Unit that a percentage calculation in which there is an apparent understatement or overstatement of approximately one per cent of the proof gallons purchased and sold during a given period is sufficient to confirm a physical inventory.

Dated: This 18th day of November, 1949.

/s/ MORRIS M. GRUPP,

/s/ LEON SCHILLER,

Attorneys for Plaintiff.

FRANK J. HENNESSY,

Attorney for Defendant.

/s/ C. ELMER COLLETT.

[Endorsed]: Filed November 29, 1949.

District Court of the United States, Northern  
District of California, Southern Division

At a Stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Thursday, the 1st day of December, in the year of our Lord one thousand nine hundred and forty-nine.

Present: The Honorable Lloyd L. Black,  
District Judge.

[Title of Cause.]

ORDER DENYING MOTION TO REOPEN—  
ORDER JUDGMENT ENTERED IN  
FAVOR OF DEFENDANT—ORDER DIS-  
MISSING COMPLAINT

This case came on regularly this day for hearing on motion to reopen and for submission. Ordered that said motion be denied and judgment entered in favor of defendant. Complaint ordered dismissed, defendant to file findings.

In the United States District Court for the Northern District of California, Southern Division

No. 28965-R

NICK W. MAROOSIS,

Plaintiff,

vs.

JAMES G. SMYTH, United States Collector of Internal Revenue for the First Collection District of California,

Defendant.

PLAINTIFF'S OBJECTIONS TO DEFENDANT'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

I.

Plaintiff objects to defendant's proposed Finding of Fact No. III on the grounds that there is no evidence in the record to warrant such finding that the floor stock tax return of the plaintiff filed on May 1, 1944, disclosed that of the 400 cases of Three Rivers Whiskey removed from the warehouse on March 30 and 31, 1944, plaintiff declared  $271\frac{1}{3}$  cases on hand as of April 1, 1944. That the records of sales of the plaintiff disclosed the sales on March 30 and 31, 1944, of  $128\frac{2}{3}$  of Three Rivers Whiskey, thus accounting fully for the 400 cases removed from the warehouse on March 30 and 31, 1944.

## II.

Plaintiff objects to defendant's proposed Finding of Fact No. IV on the same grounds as hereinabove set forth as objections to proposed Finding of Fact No. III and in this regard plaintiff points out that if the inventory of May 2, 1944, taken by the agents of the Alcohol Tax Unit did not account for the 200 cases of Three Rivers Whiskey removed from the warehouse on March 31, 1944, and the 100 cases of whiskey allegedly stored in the basement of the Haight Street store or a total of 300 cases, then there is no explanation by the evidence in this case for the existence of  $271\frac{1}{3}$  cases of Three Rivers Whiskey declared on hand as of April 1, 1944, in the Geary Street store return and no explanation of the  $128\frac{2}{3}$  cases sold on March 30 and 31, 1944, according to the records of the plaintiff. In effect by pure mathematics and the application of common sense to the evidence in this case if we consider that the plaintiff declared  $271\frac{1}{3}$  cases of Three Rivers Whiskey on hand on April 1, 1944, in his Geary Street store and  $128\frac{2}{3}$  cases sold according to his records on March 30 and 31, 1944, which accounts in turn for 400 cases according to the undisputed evidence in this case and if in addition thereto, the Court finds that there were 300 cases unaccounted for, to-wit: 200 cases removed from the warehouse on March 31, 1944, and the 100 cases which defendant denies was in the Haight Street store, then the Court would, in effect, be finding that Mr. Maroosis on March 30 and 31, 1944, re-

moved 700 cases of liquor from the warehouse—400 cases of which he accounted for, 300 cases of which he did not account for, all of which is contrary to the evidence of both the plaintiff and the defendant in this case, since such evidence discloses that only 400 cases were removed. Furthermore, it is quite obvious that the Court's finding that on May 2, 1944, the agents of the Alcohol Tax Unit, took an inventory in the store, which inventory failed to account for the 300 cases is obviously omitting the record of the sales of Three Rivers Whiskey between April 1, 1944, and May 2, 1944, the records of which sales are in Court and in evidence.

### III.

Plaintiff objects to defendant's proposed Finding of Fact No. V on the grounds that the evidence established that the 108.98 proof gallons allegedly over-declared by the plaintiff according to the inventory of May 2, 1944, taken by the Alcohol Tax Unit is fully explained by the presence of 60 cases of liquor in the Haight Street store, which 60 cases contains 123.84 proof gallons.

### IV.

Plaintiff objects to defendant's proposed Finding of Fact No. VI. on the grounds that said Finding of Fact admits that defendant's entire determination of the assessment and fraud penalty was based upon the defendant's acceptance of the plaintiff's estimated figure of 86 per cent as being the percentage of distilled spirits sales as to gross sales.



Further, that the statement in said Finding "that the said percentage figure of 86 per cent is reasonable" is based on no evidence in this case. That the defendant admits by the very proposed finding containing the above-quoted statement that the figure is not correct but merely states "that it is reasonable." That there is no evidence in the record to establish the reasonableness of the said 86 per cent figure and the evidence in the record establishes the figure of 96.41 per cent as the only accurate figure based on actual audit.

#### V.

Plaintiff objects to defendant's proposed Finding of Fact No. VII on the ground that said proposed Finding of Fact is contrary to all of the evidence in this case, on the ground that the declaration of the plaintiff was true and correct and there was no intention to conceal or fail to declare any distilled spirits on hand as of April 1, 1944.

#### VI.

Plaintiff objects to defendant's proposed Conclusion of Law No. 1 on the grounds that there is no evidence to support said Conclusion of Law. That it is not a Conclusion of Law but a Finding of Fact. That it is unique in that the defendant in effect asks this Court to determine that their own physical inventory of May 2, 1944, is "false and incorrect."

#### VII.

Plaintiff objects to defendant's proposed Conclusion of Law No. II on the ground that the de-



fendant's determination as to the alleged shortage was not reasonable in that it was neither based on audit nor on fact nor on any physical inventory but was arrived at by pure speculation and an arbitrary acceptance of an estimated word of mouth figure from the plaintiff, which subsequently was proven to be incorrect by actual audit. That the defendant was notified of the incorrectness of said estimate but nevertheless proceeded to adopt and use the same solely because by using it an additional assessment could be levied against the plaintiff. That with full knowledge of the existence of another audit by the State Board of Equalization changing that estimate of 86 per cent to 96.41 per cent, the defendant arbitrarily refused to even check by audit, or otherwise, the correctness of the new accurate figure accepted by the plaintiff and communicated to the defendant.

### VIII.

Plaintiff objects to defendant's proposed Conclusion of Law No. IV on the ground that there is no evidence in the record sufficient to support such a Conclusion.

Dated: This 21st day of December, 1949.

Respectfully submitted,

MORRIS M. GRUPP,

LEON SCHILLER,

By /s/ LEON SCHILLER,

Attorneys for Plaintiff.

OVERRULED: 2-21-50.

/s/ LLOYD L. BLACK,  
U. S. District Judge.

Receipt of Copy acknowledged.

[Endorsed]: Filed December 21, 1949.

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[Title of District Court and Cause.]

## PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above-entitled cause came on regularly for trial on November 16, 1949, and on consecutive days thereafter to and including November 19, 1949, at which time the trial was continued to December 1, 1949, for submission. Plaintiff appeared by his counsel Morris M. Grupp, Esq., and Leon Schiller, Esq., and defendant by his attorneys, Frank J. Hennessy, Esq., United States Attorney for the Northern District of California, and C. Elmer Collett, Esq., Assistant United States Attorney, and evidence both oral and documentary having been introduced and the matter having been fully heard, argued, briefed by counsel and submitted, now, therefore, the Court makes the following

### Findings of Fact

#### I.

Plaintiff is a resident of the City and County of San Francisco, State of California, and is engaged in business therein.

## II.

Defendant was at all times since May 14, 1945, to the time of the institution of this proceeding the duly appointed, qualified and acting United States Collector of Internal Revenue of the First Internal Revenue Collection District in the State of California, and is a resident of the said Northern District of California, Southern Division.

## III.

Plaintiff duly filed his return of floor stocks tax on distilled spirits, malt liquors and wines as of April 1, 1944, as required by the Revenue Act of 1943. That said return included three stores owned by the plaintiff. That Joseph's Liquor Store at 458 Geary Street was one of the three stores. That 1,330.36 proof gallons of distilled spirits of the 1,713.038 declared represented the proof gallonage at the 458 Geary Street store.

## IV.

That the tax on the inventories declared was duly paid on July 1, 1944, to Harold A. Berliner, then Collector of Internal Revenue.

## V.

That subsequently additional floor stocks taxes in the amount of \$3,744.74 were assessed on plaintiff as of April 1, 1944, upon an alleged under-declaration of the inventory of distilled spirits in the 458 Geary Street store. Also an ad valorem penalty of \$4,733.91 was assessed. Said additional assessment

in the amount of \$8,478.65, together with interest thereon in the amount of \$1,397.74 aggregating a total of \$9,876.39 was paid by plaintiff to defendant in installments between June 15, 1946, and February 2, 1948.

## VI.

That plaintiff did take an actual physical inventory of distilled spirits, malt liquors and wines. That said inventory was true and correct and the return duly filed was a true and correct reporting of said inventory.

## VII.

The tax due on said inventory, which was duly paid, was the true and correct amount due and owing.

## VIII.

That duly authorized agents and representatives of the Alcohol Tax Unit took a physical inventory of the plaintiff's stock in his store at 458 Geary Street, San Francisco, California, as of May 2, 1944, and by adjusting this inventory back to April 1, 1944, their own computation disclosed that the amount declared for distilled spirits by plaintiff exceeded the actual distilled spirits on hand as of April 1, 1944, in the amount of 108.97 proof gallons.

## IX.

That 100 cases of Three Rivers Whiskey belonging to Joseph's Liquor Store were stored at 499 Haight Street as of April 1, 1944, and that said 100 cases were included in the inventory declared as

of April 1, 1944, by plaintiff for Joseph's Liquor Store.

X.

That on May 2, 1944, 60 of said 100 cases of Three Rivers Whiskey were still stored at the Haight Street store. That 60 cases of Three Rivers Whiskey represents 123.84 proof gallons of distilled spirits.

XI.

That plaintiff informed Mr. Hedrick, an agent of the Alcohol Tax Unit, that 100 cases of Three Rivers Whiskey belonging to the Geary Street store had been stored in the Haight Street store as of April 1, 1944, and that 60 cases were there on May 2, 1944.

XII.

That the 123.84 proof gallons when added to the inventory of May 2, 1944, taken by the Alcohol Tax Unit and reconciled back to April 1, 1944, substantiates the physical inventory of plaintiff as of April 1, 1944.

XIII.

The defendant admits in Paragraph VI of his Answer and the Court finds that the physical inventory taken by the Alcohol Tax Unit on May 2, 1944, and reconciled back to April 1, 1944, confirmed the plaintiff's inventory.

XIV.

That the defendant completely disregarded the physical inventory taken by plaintiff as of April 1, 1944, and their own physical inventory of May

2, 1944, as reconciled back to April 1, 1944, in making the assessment.

### XV.

That defendant admits and the Court finds that the alleged under-declaration was determined as follows:

Inventory of proof gallons of distilled spirits on hand at date of previous filing of Form 758,

Proof Gal.

November 1, 1942..... 631.93

Add:

Distilled Spirits purchases November

1, 1942, to March 31, 1944.....12,944.74

---

13,576.67

Deduct:

Sales in proof gallons for the period

November 1, 1942, to March 31,

1944 .....11,023.46

---

Computed inventory, April 1, 1944.... 2,553.21

Inventory reported on Form 758 as of

April 1, 1944, for 458 Geary Street

store ..... 1,330.36

---

Alleged under-declaration..... 1,222.85

The sum of 1,222.85 proof gallons multiplied by \$3.00 per proof gallon equals \$3,668.55. To this figure, the examining officer added \$76.19 for which no explanation was furnished taxpayer, yielding a

tax deficiency of \$3,744.74. To this was added a penalty of 50 per cent of the total tax or an amount of \$4,733.91, resulting in a total assessment of \$8,478.65.

#### XVI.

The inventory of distilled spirits as of November 1, 1942, was taken from Mr. Maroosis' declaration of distilled spirits filed as of November 1, 1942.

#### XVII.

The overall sales were taken from the books of Mr. Maroosis and accepted by the Alcohol Tax Unit for the purposes of their calculation.

#### XVIII.

The actual purchases were confirmed by the Alcohol Tax Unit by examining the invoices in the hands of wholesalers which in turn were confirmed by the books of Mr. Maroosis.

#### XIX.

The figure of 86 per cent as the percentage of gross sales of distilled spirits to gross overall sales was obtained orally from Mr. Maroosis as his estimate.

#### XX.

The 86 per cent figure is not substantiated by any audit procedure whatever.

#### XXI.

It has been stipulated by attorneys for plaintiff and defendant and the Court finds that if 96.41 per cent of the gross sales between July 1, 1943, to



March 31, 1944, were sales of distilled spirits that the alleged under-declaration of 1,222.85 proof gallons would be reduced to a calculated understatement of only 149.56 proof gallons.

## XXII.

By stipulation between the parties and the Court finds that if the figure of 96.41 per cent were used in place of the 86 per cent figure for the period July 1, 1943, to March 31, 1944, the calculated inventory would substantiate the taxpayer's April 1, 1944, physical inventory.

## XXIII.

The State Board of Equalization of the State of California conducted an audit of plaintiff's books in 1944 in order to determine distilled spirits sales for the period July 1, 1943, to May 25, 1944. In this audit the State Board of Equalization determined that distilled spirits sales were 96.41 per cent of overall sales for said period. The State Board of Equalization determined distilled spirits sales at ceiling prices and a copy of said State Board audit was, prior to the assessment herein referred to, delivered to the Alcohol Tax Unit by the plaintiff and no audit was made by said Alcohol Tax Unit to disprove said State Board of Equalization's audit. Plaintiff prior to the assessment and based upon the said State Board of Equalization audit requested and demanded that his prior oral estimate of 86 per cent as the basis of determining gross distilled spirits sales to overall gross sales be

changed to 96.41 per cent but that said figure was not changed by the Alcohol Tax Unit and that said Alcohol Tax Unit still used the 86 per cent figure to determine the assessment.

#### XXIV.

That the fraud penalty levied and assessed and collected by the defendant is invalid in that the tax assessment of \$3,744.74 is based on artificial bases and illegal grounds and constitutes no basis for the application of a penalty for fraud; that said penalties for fraud are limited to deficiencies due to fraud with intent to evade the tax; that plaintiff has during all of the times herein referred to denied the existence of any deficiency and questioned the arbitrary assessment and denied the existence of any deficiency for floor tax, denied any fraudulent intent to evade the tax and still so denies the existence of any such fraudulent intent.

#### XXV.

Plaintiff duly filed his claim for refund of said payment of \$9,876.39. Said claim was made and filed in accordance with the provisions of the law in that regard and the regulations of the Secretary of the Treasury established in pursuance thereof and alleged as the basis for said claim the same grounds and facts hereinbefore alleged and herein relied upon.

#### XXVI.

Said claim for refund was rejected and disallowed in full by the Commissioner of Internal Revenue.

Notice of the rejection and disallowance of said claim for refund was mailed to plaintiff by registered mail by said Commissioner on February 15, 1949.

## XXVII.

That no part of said sum of \$9,876.39 erroneously and illegally collected from the plaintiff by defendant, as aforesaid, has been repaid or refunded, and said sum of \$9,876.39, together with interest thereon as provided by law, is due, unpaid and owing to the plaintiff from the defendant.

## Conclusions of Law

### I.

That defendant's disregard of plaintiff's inventory of April 1, 1944, and of defendant's own physical inventory of May 2, 1944, as reconciled back to April 1, 1944, is improper.

### II.

That defendant's assessment based on the figure of 86 per cent of the gross sales being sales of distilled spirits was inaccurate and improper in that it was based upon no audit but upon the taxpayer's estimate given as an "estimate" and accepted as an "estimate" but which estimate was subsequently by actual audit of the State Board of Equalization of the State of California found to be incorrect.

### III.

That the failure of the Alcohol Tax Unit to substantiate the 86 per cent figure as accurate overcame

the presumption of the accuracy and propriety of the assessment, which assessment was in turn based upon the 86 per cent figure.

IV.

That the proper figure to have been used by the Alcohol Tax Unit as the percentage of distilled spirits sales as to total gross sales was 96.41 per cent.

V.

That the tax return filed by the plaintiff on May 1, 1944, was true and correct and the assessment of the fraud penalty was unwarranted and improper.

VI.

That plaintiff should have judgment against the defendant for \$9,876.39, plus interest at six (6%) per cent per annum from the date of the payment of the assessment.

Let judgment be entered accordingly.

Done and Dated this . . . . . day of December, 1949.

.....,

United States District Judge.

Receipt of Copy acknowledged.

Lodged December 21, 1949.

[Endorsed]: Filed February 25, 1950.

[Title of District Court and Cause.]

## PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above entitled cause came on regularly for trial on November 16, 1949, and on consecutive days thereafter to and including November 19, 1949, at which time the trial was continued to December 1, 1949, for submission. Plaintiff appeared by his counsel, Morris M. Grupp, Esq., and defendant by his attorneys, Frank J. Hennessy, Esq., United States Attorney for the Northern District of California, and C. Elmer Collett, Esq., Assistant United States Attorney, and evidence both oral and documentary having been introduced and the matter having been fully heard, argued, briefed by counsel and submitted, now, therefore, the Court makes the following

### Findings of Fact

#### I.

This is an action to recover liquor floor taxes and interest against James G. Smyth, the duly appointed, qualified and acting Collector of Internal Revenue for the First Collection District of the State of California.

#### II.

Plaintiff is a resident of the City and County of San Francisco, State of California. On May 1, 1944, as required by the Revenue Act of 1943, plaintiff filed a floor stock tax return on distilled spirits, malt liquors and wines for the store known as

Joseph's Liquor Store, 458 Geary Street, San Francisco, California, owned and operated by plaintiff. Said return reported 1330.36 proof gallons of distilled spirits floor stock of said store on April 1, 1944.

### III.

On March 31, 1944, 200 cases of Three Rivers Whiskey floor stock of said store at 458 Geary Street were moved by plaintiff from a warehouse to an unknown destination.

### IV.

On May 2, 1944, defendant, by his agents, took a physical inventory of the stock of the said store at 458 Geary Street and after determining the sales and purchases of said store for the month of April, 1944, adjusted said inventory back to April 1, 1944. Said inventory as adjusted did not include, nor did it account for the said 200 cases of Three Rivers Whiskey moved from the warehouse on March 31, 1944. Said inventory did not include, nor did it account for 100 cases of Three Rivers Whiskey later claimed by plaintiff to have been located in the basement of a store at 499 Haight Street, San Francisco, California.

### V.

That the comparison of the said inventory of May 2, 1944, as adjusted to April 1st, with plaintiff's tax return of May 1, 1944, showed a difference in overdeclaration of distilled spirits by plaintiff of 108.98 proof gallons.

### VI.

That neither the inventory taken by defendant on



May 2, 1944, as adjusted to April 1, 1944, nor the inventory taken by plaintiff on April 1, 1944, upon which his tax return of 1330.36 proof gallons was predicated, was true or correct. That plaintiff's said tax return of May 1, 1944, was false and incorrect. That subsequent to May 2, 1944, defendant determined plaintiff's purchases and gross sales of distilled spirits for the period from November 1, 1942, to March 31, 1944, and was informed by plaintiff that the percentage of sales of distilled spirits as to other sales for said period was 86%; that the said percentage figure of 86% was reasonable. Defendant converted the money figure for purchases and gross sales of distilled spirits during said period into proof gallons and determined that plaintiff had failed to declare 1,222.85 proof gallons of distilled spirits in his said tax return of May 1, 1944. The Commissioner of Internal Revenue thereafter levied an assessment on plaintiff.

## VII.

That plaintiff knowingly, intentionally, wilfully and deliberately concealed and failed to declare in his said floor tax return filed May 1, 1944, the said 200 cases of whiskey removed from the warehouse on March 31, 1944.

## Conclusions of Law

### I.

That defendant properly disregarded plaintiff's written inventory of April 1, 1944, and defendant's



inventory of May 2, 1944, as adjusted to April 1, 1944, both said inventories being false and incorrect.

## II.

That defendant's determination that plaintiff failed to declare 1,222.85 proof gallons of distilled spirits in his floor tax return on May 1, 1944, was reasonable.

## III.

The assessment levied upon plaintiff is presumed to be accurate and proper, and plaintiff has failed to overcome said presumption by adequate evidence.

## IV.

The tax return filed by plaintiff on May 1, 1944, was false, fraudulent, and a deliberate suppression of vital facts, and was so made and filed with the intent of evading the tax, and justified the Commissioner of Internal Revenue in levying an assessment upon plaintiff for the fraud penalty.

## V.

Plaintiff's complaint should be dismissed and judgment entered for defendant for his costs of suit.

Let judgment be entered accordingly.

Done and Dated This ..... Day of .....,  
19....

.....,

United States District Judge.

Lodged December 16, 1949.

[Endorsed]: Filed February 25, 1950.

[Title of District Court and Cause.]

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above entitled cause came on regularly for trial on November 16, 1949, and on consecutive days thereafter to and including November 19, 1949, at which time the trial was continued to December 1, 1949, for submission. Plaintiff appeared by his counsel, Morris M. Grupp, Esq., and defendant by his attorneys, Frank J. Hennessy, Esq., United State Attorney for the Northern District of California, and C. Elmer Collett, Esq., Assistant United States Attorney, and evidence both oral and documentary having been introduced and the matter having been fully heard, argued, briefed by counsel and submitted, now, therefore, the Court makes the following

### Findings of Fact

#### I.

This is an action to recover liquor floor taxes and interest against James G. Smyth, the duly appointed, qualified and acting Collector of Internal Revenue for the First Collection District of the State of California.

#### II.

Plaintiff is a resident of the City and County of San Francisco, State of California. On May 1, 1944, as required by the Revenue Act of 1943, plaintiff filed a floor stock tax return on distilled spirits, malt liquors and wines for the store known as

Joseph's Liquor Store, 458 Geary Street, San Francisco, California, owned and operated by plaintiff. Said return reported 1330.36 proof gallons of distilled spirits floor stock of said store on April 1, 1944.

### III.

On March 31, 1944, 200 cases of Three Rivers Whiskey floor stock of said store at 458 Geary Street were moved by plaintiff from a warehouse to an unknown destination.

### IV.

On May 2, 1944, defendant, by his agents, took a physical inventory of the stock of the said store at 458 Geary Street and after determining the sales and purchases of said store for the month of April, 1944, adjusted said inventory back to April 1, 1944. Said inventory as adjusted did not include, nor did it account for the said 200 cases of Three Rivers Whiskey moved from the warehouse on March 31, 1944. Said inventory did not include, nor did it account for 100 cases of Three Rivers Whiskey later claimed by plaintiff to have been located in the basement of a store at 499 Haight Street, San Francisco, California.

### V.

That the comparison of the said inventory of May 2, 1944, as adjusted to April 1st, with plaintiff's tax return of May 1, 1944, showed a difference in over-declaration of distilled spirits by plaintiff of 108.98 proof gallons.

## VI.

That neither the inventory taken by defendant on May 2, 1944, as adjusted to April 1, 1944, nor the inventory taken by plaintiff on April 1, 1944, upon which his tax return of 1330.36 proof gallons was predicated, was true or correct. That plaintiff's said tax return of May 1, 1944, was false and incorrect. That subsequent to May 2, 1944, defendant determined plaintiff's purchases and gross sales of distilled spirits for the period from November 1, 1942, to March 31, 1944, and was informed by plaintiff that the percentage of sales of distilled spirits as to other sales for said period was 86%; that use by defendant of said percentage figure of 86% under the circumstances was reasonable and was more favorable to plaintiff than would have been the use of 66% which was the percentage originally suggested by plaintiff as correct. Defendant converted the money figure for purchases and gross sales of distilled spirits during said period into proof gallons and determined that plaintiff had failed to declare 1,222.85 proof gallons of distilled spirits in his said tax return of May 1, 1944. That such method was the most reasonable and rational one available to defendant under the circumstances, especially since because of the knowledge defendant's agent had of the diversion of said 200 cases of whiskey mentioned in Finding of Fact III hereof defendant could have no confidence in any report by plaintiff. The Commissioner of Internal Revenue thereafter levied an assessment on plaintiff.

## VII.

That plaintiff knowingly, intentionally, wilfully and deliberately concealed and failed to declare in his said floor tax return filed May 1, 1944, the said 200 cases of whiskey removed from the warehouse on March 31, 1944.

## Conclusions of Law

## I.

That defendant properly disregarded plaintiff's written inventory of April 1, 1944, and defendant's inventory of May 2, 1944, as adjusted to April 1, 1944, both said inventories being false and incorrect.

## II.

That defendant's determination that plaintiff failed to declare 1,222.85 proof gallons of distilled spirits in his floor tax return on May 1, 1944, was reasonable.

## III.

The assessment levied upon plaintiff is presumed to be accurate and proper, and plaintiff has failed to overcome said presumption by adequate evidence.

## IV.

The tax return filed by plaintiff on May 1, 1944, was false, fraudulent, and a deliberate suppression of vital facts, and was so made and filed with the intent of evading the tax, and justified the Commissioner of Internal Revenue in levying an assessment upon plaintiff for the fraud penalty.

## V.

Plaintiff's complaint should be dismissed and judgment entered for defendant for his costs of suit.

Let judgment be entered accordingly.

Done and Dated This 21st day of February, 1950.

/s/ LLOYD L. BLACK,

United States District Judge.

[Endorsed]: Filed February 25, 1950.

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[Title of District Court and Cause.]

ORDER OVERRULING PLAINTIFF'S OBJEC-  
TIONS TO FINDINGS OF FACT AND  
CONCLUSIONS OF LAW MADE AND  
ENTERED BY THE COURT

Whereas the Findings of Fact and Conclusions of Law as made by the Court are the same as those proposed by defendant except that Finding numbered VI as made by the Court contained additional language to that proposed by defendant; and

Whereas plaintiff desires its objections entitled "Plaintiff's Objections to Defendant's Findings of Fact and Conclusions of Law" as filed in this cause on December 21, 1949, to likewise apply to the Findings of Fact and Conclusions of Law as signed by the Court, and

Whereas plaintiff has objected to the additional language set forth in Finding numbered VI as



signed by the Court, such objections being as follows:

“Relative to the revised Finding No. VI our objections thereto are, of course, still the fundamental objections heretofore made. We note particularly the Court’s statement ‘That such method was the most reasonable and rational one available to defendant under the circumstances, especially since because of the knowledge defendant’s agent had of the diversion of said 200 cases of whiskey mentioned in Finding of Fact III hereof defendant could have no confidence in any report by plaintiff.’ We feel that this language is not supported by the evidence in this case, since the evidence, according to the partial transcript in our possession relative to the movement of the liquor referred to, did not disclose that any whiskey was ever observed in that truck. Furthermore by actual mathematical calculations heretofore supplied in plaintiff’s memorandum all the whiskey removed from the warehouse was fully accounted for, including the 200 cases referred to in the proposed Finding.

“We cannot agree with the Finding that the 86 per cent ‘estimate’ supplied by Mr. Maroosis was a reasonable ‘estimate.’ We cannot help but point out that the Department of Internal Revenue could just as well have accepted his 66 per cent ‘estimate’ which would have increased the tax beyond all reason and proportion. We do not feel that a taxpayer’s ‘estimate’ is a sufficient basis for any assessment where actual figures are available. We cannot



feel that that is reasonable in the face of actual figures of the State Board of Equalization which have never been attacked by the defendant nor have the calculations or method of calculation used to arrive at the State Board of Equalization's figure ever been questioned."

And Whereas the Court deems that such additional portions of Finding numbered VI so objected to by letter dated February 20, 1950, of counsel for plaintiff are actually supported by the evidence and deems that under the evidence the method and percentage figure used by plaintiff under the circumstances disclosed by the evidence are reasonable; and Whereas the Court further deems each and all of the objections of plaintiff to be without merit,

Now Therefore, said objections, and each of them, are overruled.

Dated February 21, 1950.

/s/ LLOYD L. BLACK,

United States District Judge.

[Endorsed]: Filed February 25, 1950.

In the United States District Court for the Northern District of California, Southern Division

No. 28965-R

NICK W. MAROOSIS,

Plaintiff,

vs.

JAMES G. SMYTH, United States Collector of Internal Revenue for the First Collection District of California,

Defendant.

### JUDGMENT

This cause came on regularly for trial on November 16, 1949, and on consecutive days thereafter to and including November 19, 1949, at which time the trial was continued to December 1, 1949, Judge Lloyd L. Black presiding, sitting without a jury. The plaintiff was present in person and represented by his counsel, Morris M. Grupp, Esq., and defendant was represented by his attorneys, Frank J. Hennessy, Esq., United States Attorney for the Northern District of California, and C. Elmer Collett, Esq., Assistant United States Attorney.

Thereupon, oral and documentary evidence was introduced by and on behalf of each of the parties hereto and at the close of all of the evidence oral and written arguments were made by counsel for the respective parties, and the cause was thereupon taken under advisement, and thereafter the Court, being fully advised in the premises, made and signed and ordered filed herein its Findings of Fact and

Conclusions of Law, which are by reference made a part hereof.

Wherefore, by reason of the law and the evidence and the premises and the Findings of Fact and Conclusions of Law, as aforesaid,

It Is Ordered and Adjudged that plaintiff take nothing from the defendant, and that plaintiff's complaint herein be, and the same is hereby dismissed.

It Is Further Ordered, Adjudged and Decreed that defendant recover costs in the amount of \$. . . . .00.

Done and Dated This 21st day of February, 1950.

/s/ LLOYD L. BLACK,  
United States District Judge.

Lodged December 22, 1949.

[Endorsed]: Filed February 25, 1950.

[Title of District Court and Cause.]

MEMORANDUM OF COSTS  
AND DISBURSEMENTS

Marshal's fees .....	\$
Clerk's fees .....	
Reporter's fees .....	
Docket fee .....	20.00
Examiner's fees .....	
Witness fees .....	
Portion of Transcript.....	12.10

United States of America,  
Northern District of California—ss.

C. E. Collett being duly sworn, deposes and says: That he is the Assistant United States Attorney in charge of this case in the above-entitled cause, and as such has knowledge of the facts relative to the above costs and disbursements; that the items in the above memorandum contained are correct; that the said disbursements have been necessarily incurred in the said cause; and that the services charged therein have been actually and necessarily performed as therein stated.

/s/ C. E. COLLETT.

Subscribed and sworn to before me this 27th day of February, A.D. 1950.

[Seal] /s/ MARGARET P. BLAIR,  
Deputy Clerk, United States District Court, Northern District of California.

To: Plaintiff above-named and to Messrs. Grupp & Schiller, his attorneys, 961 Mills Building, San Francisco, Calif. (4)

You will please take notice that on Thursday, the 3rd day of March, A.D. 1950, at the hour of 2:00 o'clock p.m., the undersigned will apply to the clerk of said Court, to have the within memorandum of costs and disbursements taxed, pursuant to the rule of said Court, in such case made and provided.

/s/ C. E. COLLETT,  
Asst. U. S. Attorney,  
Attorney for Defendant.

Receipt of Copy acknowledged.

[Endorsed]: Filed February 27, 1950.

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[Title of District Court and Cause.]

### NOTICE OF APPEAL TO CIRCUIT COURT OF APPEALS

Notice Is Hereby Given that the plaintiff in the above-entitled action hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from the final judgment entered on the 27th day of February, 1950, in favor of the defendant herein.

Dated: This 23d day of March, 1950.

/s/ MORRIS M. GRUPP,  
Attorney for Plaintiff.

[Endorsed]: Filed March 24, 1950.

[Title of District Court and Cause.]

DESIGNATION OF CONTENTS OF RECORD  
ON APPEAL

To the Clerk of the Above Named Court:

In accordance with Rule 75(a) of the Federal Rules of Civil Procedure the plaintiff designates the following portion of the record, proceedings and evidence to be contained in the Record on Appeal:

1. Complaint filed on the 22d day of June, 1949.
2. Answer of the Defendant, James G. Smyth, Collector of Internal Revenue for the First Collection District of California, filed on the 18th day of August, 1949.
3. Notice of Motion and Motion for Re-Opening Case filed on the 26th day of November, 1949.
4. Affidavit of David Dellari, filed in support of Motion to Re-Open, filed on the 26th day of November, 1949.
5. Written Stipulation of counsel filed on the 29th day of November, 1949.
6. Order Motion to Re-Open Denied of December 1, 1949.
7. Memorandum and Order of Judgment in favor of Defendant of December 1, 1949.
8. Defendant's Findings of Fact and Conclusions of Law lodged on December 16, 1949.
9. Plaintiff's Findings of Fact and Conclusions of Law lodged on December 21, 1949.
10. Plaintiff's Objections to Defendant's Find-

ings of Fact and Conclusions of Law filed on December 21, 1949.

11. Plaintiff's Proposed Findings of Fact and Conclusions of Law filed on February 25, 1950.

12. Defendant's Proposed Findings of Fact and Conclusions of Law filed February 25, 1950.

13. Findings of Fact and Conclusions of Law of the Court filed February 25, 1950.

14. Order Overruling Plaintiff's Objections to Findings of Fact and Conclusions of Law Made and Entered By The Court filed February 25, 1950.

15. Judgment entered February 27, 1950.

16. Memorandum of Costs and Disbursements filed February 27, 1950.

17. Notice of Appeal to Circuit Court of Appeals filed March 24, 1950.

18. This Designation of Contents of Record on Appeal.

19. All of the original Exhibits introduced by plaintiff and defendant.

20. Entire Reporter's Transcript of the trial.

Dated: This 29th day of March, 1950.

LEON SCHILLER, ESQ.,

MORRIS M. GRUPP, ESQ.,

By /s/ MORRIS M. GRUPP,

Attorneys for Plaintiff.

Receipt of Copy acknowledged.

[Endorsed]: Filed March 30, 1950.



In the Southern Division of the United States District Court for the Northern District of California

No. 28965

NICK W. MAROOSIS,

Plaintiff,

vs.

JAMES G. SMYTH, U. S. Collector of Internal Revenue for the First Collection District of California,

Defendant.

Before: Hon. Lloyd L. Black,  
Judge.

REPORTER'S TRANSCRIPT

November 16, 17, 18, 19, 1949

Appearances:

For the Plaintiff:

MORRIS M. GRUPP, ESQ., and  
LEON SCHILLER, ESQ.

For the Government:

C. ELMER COLLETT, ESQ.,  
Assistant U. S. Attorney.

## Morning Session

Wednesday, November 16, 1949 at 9:30 A.M.

The Court: As I understand it, the case of Nick W. Maroosis vs. James G. Smyth is to be tried before me, is that correct, gentlemen?

Mr. Collett: That is correct. However, there are some depositions heretofore taken.

Mr. Grupp: I believe there was some discussion about jury trial, as to whether we were entitled to it. I think we were, but we have decided to waive it.

The Court: All right, both sides agree to try it before the court without a jury?

Mr. Grupp: That is right. We have written stipulation which has been prepared and I have handed counsel, and we will sign that.

Mr. Collett: I am signing this stipulation, but it is understood the government does not concede you have any right to jury trial in the first place. It is dated November 8.

The Court: All right, you may proceed.

Mr. Grupp: Would your Honor like me to make an opening statement?

The Court: You may make an opening statement if you think it will be helpful to the Court.

(Opening Statement and colloquy between counsel omitted.)

The Court: As I understand it, at least one vital difference [2\*] between the claimant and the collector, or the plaintiff and the defendant, is whether

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\* Page numbering appearing at top of page of original certified Transcript of Record.

the figure of approximately 96 per cent or the figure of approximately 86 per cent is used as the percentage of sales of distilled spirits to the total sales of this store on Geary Street.

Mr. Grupp: That is correct.

The Court: I have carefully refrained from saying that the only difference between—I will refrain saying such is the vital difference. I said it is a vital difference. It is now 12:00 o'clock. I think I should do this with you gentlemen: I think I should continue this matter until 2:15. I have an announcement of a decision to make at 2:00 o'clock that will take at least 15 minutes. In the meantime, if you gentlemen can get together on a stipulation enough so that when it is announced to me it is a firm stipulation, I would be interested in that; but I am not interested in negotiations for stipulation which are repudiated, because at least I am confused.

Mr. Collett: I think we can do that, your Honor.

The Court: All right, you are excused.

(Thereupon an adjournment was taken until 2:15 p.m. this date.) [3]

#### Afternoon Session

Wednesday, November 16, 1949 at 2:15 P.M.

The Court: You may proceed.

Mr. Grupp: Counsel and I did agree on some figures. It is stipulated that the opening inventory of this particular store as of November 1, 1942, may be deemed to be 631.93 proof gallons of distilled spirits.

The Court: That is November 1, 1942?

Mr. Grupp: That the total purchase of this store of distilled spirits for the period between November 1, 1942, to March 31, 1944, is \$203,208.51; that the gross sales, including sales tax and including sales of distilled and non-distilled spirits is \$276,328.51; that the sales tax included in that gross figure is the amount of \$7,041.25; that the net sales therefore, were \$269,287.26.

The Court: Is that so stipulated?

Mr. Collett: So stipulated.

The Court: Those are firm stipulations?

Mr. Grupp: That is right.

### NICK W. MAROOSIS

the plaintiff herein, called as a witness on his own behalf, sworn.

The Clerk: Please state your name to the Court.

A. Nick W. Maroosis. [4]

### Direct Examination

By Mr. Grupp:

Q. You are of course the plaintiff in this action, are you not?      A. Yes, sir.

Q. Also known as N. W. Maroosis?

A. Yes, sir.

Q. Mr. Maroosis, what is your business at the present time?

A. The retail package store business, the liquor business, in both forms of the liquor business.

Q. And in 1942 to 1944, inclusive, what business were you in?

(Testimony of Nick W. Maroosis.)

A. In the liquor business, retail package business.

The Court: Are you in the wholesale now?

A. No.

The Court: You are in the package and retail?

A. I am in the retail package and the off-sale—or on-sale spirits.

Q. (By Mr. Grupp): In 1944 you were only in the retail package business, I understand.

A. That is correct.

Q. Between the dates of November, 1942, and April 1, 1944, how many liquor package stores did you have? A. Three.

Q. Where were they located?

A. 499 Haight Street, 2066 Fillmore, 458 Geary Street.

The Court: Three business places, and where were they [5] again?

A. 499 Haight Street, 2066 Fillmore, and 458 Geary.

Q. (By Mr. Grupp): With reference to the 458 Geary Street, Mr. Maroosis, prior to your taking that store over some time in 1944, who were the owners of that establishment?

A. Mr. Mike Kosloff and myself.

Q. You were partners then? A. Yes.

The Court: That was for all three stores?

A. No, only 458 Geary.

Q. (By Mr. Grupp): What was the name of that store? A. Joseph's.

(Testimony of Nick W. Maroosis.)

Q. Joseph's Liquor Store?

The Court: That would be for what date?

A. Before April 1, before the—would you repeat your question?

Q. (By Mr. Grupp): My question related to the dates when you took physical possession yourself of the Geary Street store, that is, Joseph's.

Q. Myself, without a partner? I took physical possession on April 1, 1944.

Q. Prior to that date you advertised, did you, the operation of that store as a liquor store business?

A. Yes, sir.

Q. I show you what purports—it is from the Daily Commercial News, I believe it is. [6]

A. It was in the Examiner, I believe. No, I take it back, it says here the Daily Commercial News. It seems to me it was printed in the Examiner.

Q. You published at that time, however, this certificate of individual doing business under a fictitious name? A. Yes.

Mr. Grupp: Might I offer this as plaintiff's exhibit 1?

The Court: Any objection?

Mr. Collett: No objection.

(Thereupon certificate referred to was received in evidence and marked plaintiff's exhibit No. 1.)

The Court: Exhibit 1 is admitted, there being no objection. Let me see it please.



(Testimony of Nick W. Maroosis.)

Q. (By Mr. Grupp): Now, Mr. Maroosis, I believe this refers to the date March 13 as the consummation of your transaction with Mr. Kosloff and taking over that store. A. Yes.

Q. Did you actually take physical possession of that store on March 13? A. No.

Q. When did you take physical possession of the store? A. April 1, 1944.

Q. Mr. Maroosis, what were the names under which you operated the Haight Street and Fillmore stores? A. Bi-Rite.

Q. The Bi-Rite Stores were those two individual operations? A. Yes, sir.

Q. Nobody had any interest in it other than yourself? A. No, sir.

Q. Mr. Kosloff was only a partner in the Joseph's? A. Yes, sir.

Q. On the 1st day of April, 1944, were you—or prior to that time, did you at any time take a physical inventory immediately prior to the 1st of April, 1944 of the liquor, distilled spirits, and other inventory in Joseph's, 458 Geary?

A. Yes, we did.

Q. You say "we did." Just explain who did to the Court.

A. Well, I don't know. I would have to see the copy.

Q. Now, Mr. Maroosis, handing you this book which contains some typewritten sheets and also some sheets on which there are penciled listings, I ask you what that document is.



(Testimony of Nick W. Maroosis.)

A. It is the inventory taken on the 31st of March, 1944.

Q. Of what store? A. 458 Geary Street.

Q. Can you by examining that inventory tell us who took that inventory? What I am particularly interested in, Mr. Maroosis, were you there? I don't find anything there that shows you were there when that inventory was taken. I am not interested in the others unless counsel is.

A. Yes, I was there. I would say there were four people that [8] I identified the handwriting other than myself. There is some handwriting apparently belongs, I would say, to Vernon Jones, who was our manager at the Haight and Fillmore stores; and I would also say there is handwriting there that possibly, or more than likely, belongs to Mr.—belongs to Mrs. Vera Kosloff and myself.

Q. Now, Mr. Maroosis, will you explain to the court how that inventory was taken?

A. Well, it is a very simple procedure. You start at one point in the store and go around and count the bottles. One party counts the bottles and another writes it down and checks them.

Q. Does that inventory contain every item that was in the store on the 31st day of March, 1944?

A. This inventory, the original doesn't. The original—you are asking me two different questions. The original would contain everything that was in the store on the 31st of March?

Q. Yes.

(Testimony of Nick W. Maroosis.)

A. Is that what you want me to answer?

Q. I don't quite understand your previous answer.

A. Let me explain it like this: The original procedure, the copy is the same as this copy here with the exception of in most instances you will find in a liquor store where you will have one particular type of whiskey or wine in the window you will have some of the particular type or same type on the shelf for display, you will have still some more for sale and you will [9] have still more in your warehouse and still have some more on the warehouse shelf. What that means, you might have five—in regard to the particular items for five dates, the penciled copy, but in the recap you will only check it for anything—the penciled copy is 37 pages and the recap only 17.

Q. What I am trying to ascertain is whether the penciled copies show the actual notations of inventory taken as it was taken. A. Yes.

Q. Does that contain every item of liquor that was in this store? A. Yes, sir.

Q. Were there any items of stock that were not taken in that inventory?

A. The July 2nd item, 100 cases of Three Rivers.  
The Court: 100 cases in the inventory?

A. There is 100 cases in the recap, but is not in the inventory because it wasn't in the store.

Mr. Grupp: Let's look at that inventory with reference to the—strike that, please. Incidentally,

(Testimony of Nick W. Maroosis.)

you had identified, I believe, in answer to my questions, this document as an inventory and as a recap?      A. Yes, it is a recap of the inventory.

Q. How could we tell the difference by just looking at it? Which is the inventory and which the recap, as you look at it?

A. It is quite obvious. The inventory only shows the number of items and the retail sales price to distinguish it, because [10] on the forms, that is, you have—for example, you have some champagne, you have one of a 1933 vintage which will be \$5 and one of 1937 vintage——

Q. I don't think you understood my question.

A. I am trying to show the reason for putting the retail price——

Q. Will you listen to the question? In other words, the inventory statement is a penciled statement?      A. Yes.

Q. And the recap typed out?      A. Yes.

Q. Then we can say whatever is typed is the recap?      A. Yes.

Q. Now, looking at the penciled notations, will you refer to page 33? You examined that part during the lunch hour?      A. Yes.

Q. I will ask you if on page 33 you have noted any entries of Three Rivers?

A. Two fifths. Two only fifths.

Q. Will you look at page 36?

A. That is two bottles. I had one notation, 163 cases of Three Rivers on page 36.

(Testimony of Nick W. Maroosis.)

Q. How many bottles?

A. Two only bottles of Three Rivers.

Q. Am I correct that 163 cases means 1956 bottles?      A. Multiply by 12. [11]

Q. Will you look at page 37.

A. 1956 bottles. Page 37, eight cases of Three Rivers.

Q. That means 96 bottles?      A. Yes.

Q. Aside from those entries which I called to your attention, those four entries, on page 33, two entries on page 36, and one on page 37 in your penciled inventory, is there any other reference to Three Rivers?      A. No.

Q. I think that means 2,056 bottles? Yes, that is right, as presented in the penciled inventory. Now, Mr. Maroosis, at this point I would like for you to refer to page 10, I believe it is, on your recap of the inventory which you have before you.

A. Yes.

Q. Do you note any reference in that page 10 of the recap to Three Rivers?

A. Yes, 3256 fifths Three Rivers whiskey.

Q. 3256 fifths? The entries in the penciled notes were 2056 bottles. Your recap shows 3256 bottles, is that correct?      A. Correct.

Q. That is a difference of 1200 bottles. How many cases is that?      A. 100 cases.

Q. At this point, Mr. Maroosis, I hand you two separate documents, one in pencil and one in typing, and ask you what those documents are. [12]

(Testimony of Nick W. Maroosis.)

A. This is the same thing, only for the Haight Street.

Q. When was this inventory taken of the Haight Street store?      A. Same night.

The Court: Counsel, we are going to have a lot of difficulty with exhibits, and I would suggest that before a witness is ever handed an exhibit you have that marked as an exhibit for identification.

Mr. Grupp: I will.

The Court: Then *if is* referred to the witness, refer to that exhibit for identification, and if you say any page, refer to that, so we will know. Right now I know what he has been talking about, that he has been talking about a certain document, but long before this case is over I will have forgotten which document he was speaking of first.

Mr. Grupp: Might I at this time offer, your Honor, the inventory and recap of the 458 Geary Street?

The Court: Have it marked and then hand it to him and ask him if that is the document he has been talking about.

Mr. Grupp: All right.

(Thereupon inventory and recap of 458 Geary Street store were marked plaintiff's exhibit 2 for identification.)

The Court: That is a combination of the penciled inventory and typed recap, is that correct?

Mr. Grupp: That is correct.

A. Correct. [13]

(Testimony of Nick W. Maroosis.)

The Court: For Geary Street?

A. Yes.

The Court: Now you may hand this to the witness.

Q. (By Mr. Grupp:) Mr. Maroosis, I am handing you plaintiff's exhibit 2 for identification.

A. This is the recap and penciled copy of the inventory of the 458 Geary Street store for March 31, 1944.

Q. The questions which I asked you relate to Three Rivers and now refer to this inventory and see whether or not this testimony referred to this plaintiff's exhibit 2 for identification.

A. Specifically.

The Court: Now if you wish you may offer the exhibit.

Mr. Grupp: I do offer it in evidence.

Mr. Collett: Let me see. He has identified something there?

The Court: I am not anxious that you do that now. He has offered it. Do you wish time to consider it? I am satisfied with this now. I will not rule on it. You may have your time. I am only suggesting before this witness is handed any other documents they first be marked. This one for Haight Street, apparently, should be exhibit 3 for identification. Later I will have less difficulty than I will otherwise.

Mr. Grupp: The Haight Street is—well, I offer



(Testimony of Nick W. Maroosis.)

the penciled sheets as plaintiff's exhibit for identification next in order. [14]

The Clerk: Plaintiff's exhibit No. 3 for identification.

Mr. Grupp: And the book with the typed sheets as plaintiff's exhibit for identification No. 4.

(Whereupon penciled sheets and book with typed sheets were marked plaintiff's exhibits No. 3 and 4, respectively, for identification.)

Mr. Collett: I understand you are offering this in evidence?

The Court: I am giving you time to make your objection.

Mr. Collett: If the Court please, on voir dire I wonder if I might ask a couple of questions with respect to this particular document?

The Court: Surely.

Q. (By Mr. Collett): Mr. Maroosis, the inventory that is represented by plaintiff's exhibit 2, is this the inventory that was filed with the government on your return?

A. Is that the inventory that was filed with the government? I don't understand the question.

Q. You submitted an inventory as of March 31 in accordance with the provisions of the Revenue Act which required you to file an inventory and return on the distilled spirits you had on the floor in the Geary Street store as of April 1.

Mr. Grupp: That assumption is not so. The



(Testimony of Nick W. Maroosis.)

1943 Act did not require filing an inventory, merely a return.

Q. (By Mr. Collett): What I want to know, is this an inventory [15] filed with that return?

A. That is the inventory on which I filed on.

Q. This is the inventory on which you filed? And the difference between the penciled notes and the typewritten portion of it is nothing more than a recapitulation. Any group of it, the individual items, in pencil, they might have represented a sale of two bottles of Three Rivers, two bottles or three cases——

A. That is right.

Q. You collected them into this, into the sales portion, is that correct?

A. That is right.

Mr. Collett: No objection.

The Court: Exhibit 2 is offered. No objection. It is admitted.

(Whereupon document heretofore marked plaintiff's No. 2 for identification was received in evidence.)

Q. (By Mr. Grupp): Mr. Maroosis, I am handing you plaintiff's exhibit for identification No. 3 and ask you what that document is.

A. It is a penciled copy of the inventory at 499 Haight, March 31, 1944.

Q. Is that the original inventory taken?

A. Yes, sir.

Q. Who took that inventory?

A. This looks like it was taken by—looks like my sister was [16] one of them, my wife another.

(Testimony of Nick W. Maroosis.)

There is a foreign hand here, I can't exactly put my finger on. It was apparently by three people, however.

Q. Were you present when that was taken?

A. Yes sir.

Q. Does that inventory reflect the exact items that were in the Haight Street store on the date it purports to represent, March 31, 1944?

A. That is correct.

Q. I will ask you if on the penciled—on plaintiff's exhibit 3 for identification there are 100 cases of Three Rivers? A. Yes.

Q. Do you know what page that is?

A. For some reason or other these pages were not numbered.

Q. Well, it is the third page from the back, is that correct? A. Yes.

Q. What is the notation there?

A. It is 100 cases of Three Rivers at \$3.76, checked.

Q. Now, Mr. Maroosis, I hand you plaintiff's exhibit 4 for identification and ask you what that is?

A. That is the recap of the inventory I just returned to you.

Q. That is the recap for the Haight Street store, plaintiff's exhibit 3 for identification?

A. Yes.

Q. And I will ask you if you have examined plaintiff's exhibit [17] 3 for identification?

(Testimony of Nick W. Maroosis.)

A. Yes.

Q. And I will ask you if you have examined plaintiff's exhibit 4 for identification?

A. Yes.

Q. Is there in that recap any reference to the hundred cases of Three Rivers which was on the penciled inventory, plaintiff's exhibit 3 for identification.

A. No. That was left out of the inventory because it didn't belong in this store.

Q. Left out of the recap?

A. Left out of the recap. It was checked with the recap of the 458 Geary Street.

Q. Let me see if I understand. The penciled inventory on plaintiff's exhibit 2 for identification——

A. Is for 100 cases.

Q. For 100 cases?

A. And the recap is over 100 cases. The merchandise——

Q. Just a minute, you say the recap is over?

A. It is over because it has none, consequently it was over 100 cases.

Q. By reason of their inclusion on plaintiff's exhibit 3?

A. That is correct.

Q. That was eliminated on the recap for the Haight Street store, included in the recap on Geary store? [18]

A. Yes, and that was also paid out of Geary, who belonged to the merchandise.

Q. Will you explain, Mr. Maroosis, why this 100 cases of Three Rivers was at Haight Street?

(Testimony of Nick W. Maroosis.)

A. We didn't have any room for it at Geary.

Q. When was it moved from the warehouse?

A. I think on the 29th.

Q. Of what?

A. Of March. However, it is—there is an indication in this remark that it was on the 30th.

Q. In any event, before April 1, 1944, there was Three Rivers, how many cases removed from the warehouse

A. I thought it was 350. I believe it is 400 cases from what I am told.

Q. These 400 cases were moved out of the warehouse—

A. San Francisco Warehouse.

Q. —on the 30th and 31st of March?

A. Yes.

Q. Where were those 400 cases put?

A. They were put into the Geary Street store, and the balance of 100 cases put in the Haight Street, 499 Haight, because we didn't have room for them at Geary Street.

Q. When your floor stock tax declaration was filed—incidentally, might I at this time—strike that question.

Mr. Grupp: I offer in evidence plaintiff's exhibit 3 and [19] 4 for identification.

The Court: Exhibits 3 and 4 for identification offered in evidence.

Mr. Collett: If I might ask the Court. the witness identified one page of this penciled inventory for 499 Haight Street as the third from the back.

(Testimony of Nick W. Maroosis.)

I wonder if we might designate it by some other means so the Court won't have to be referring to the "third from the back for identification."

The Court: How many pages are there?

A. Just a few.

Mr. Grupp: Might we number the pages?

The Court: Is there any reason why they shouldn't be numbered now, starting in at the first page?

Mr. Grupp: I find it is on page 9. I number all pages down to 11 pages.

The Court: There are 11 pages in exhibit 3 for identification?

Mr. Grupp: That is correct.

The Court: That is, exhibit 3 for identification has been numbered by plaintiff's counsel today as of 11 pages, and the page heretofore referred to as "third from the end" is numbered page 9, is that right?

Mr. Grupp: That is correct.

The Court: You may proceed.

Mr. Grupp: We offer that in evidence at this time. [20]

The Court: Exhibit 3 for identification is offered. Any objection?

Mr. Collett: No objection.

The Court: Exhibit 3 admitted.

(Whereupon penciled copy of inventory, 499 Haight St., March 31, 1944, was marked plaintiff's exhibit 3 in evidence.)

(Testimony of Nick W. Maroosis.)

Mr. Grupp: Plaintiff's exhibit 4 for identification is now offered in evidence as plaintiff's exhibit next in order.

The Court: Any objection?

Mr. Collett: No objection.

The Court: Admitted.

(Whereupon recap of plaintiff's exhibit 3 offered and received as plaintiff's exhibit 4 in evidence.)

Mr. Collett: That is the recap?

The Court: Yes, 4 is the recap of 3.

Mr. Grupp: Do you have the original, counsel, of the return filed by Mr. Maroosis?

The Court: Counsel, this case is taking up more time than I had expected that it is my suggestion we work until 5:00 o'clock. Is that satisfactory to counsel?

(Colloquy between counsel omitted.)

Mr. Grupp: I have asked counsel if he has the original of these returns which consist of three pages. May I offer it as plaintiff's exhibit 5?

Mr. Collett: We will stipulate it if you want it introduced in evidence.

Mr. Grupp: All right, may it go in evidence by stipulation?

Mr. Collett: No objection.

The Court: What has been marked as plaintiff's exhibit 5 for identification it is stipulated may be admitted in evidence as what?



(Testimony of Nick W. Maroosis.)

Mr. Grupp: As plaintiff's exhibit 5.

The Court: Exhibit 5 admitted by stipulation. What does it represent?

Mr. Grupp: It represents the copy of the tax return of Mr. Maroosis as of the 1st day of April, 1944.

The Court: For the Geary Street store?

*The Court:* This is for all three stores.

(Whereupon tax return of 4/1/44 was received in evidence and marked plaintiff's exhibit 5.)

Mr. Grupp: I think since it has been admitted into evidence I would merely like to point out that this first page represents the quantities of distilled property held, the tax rate and the amount of tax paid, showing it was \$2,749.75 paid. That has a stamp marked from the Treasury Department. It isn't quite legible. The second page is amended. It is an identical form as the first page that it has a stamp marked "Amended," shows recieved by the Department of Internal Revenue May 1, 1944. Correct? [22]

Mr. Collett: Yes.

Mr. Grupp: This refers to the three stores and shows an additional amended return of 1000 proof gallons of distilled spirits, the rate of tax, and shows additional tax paid \$3000. Attached to that amended return is a notation referring to N. W. Maroosis, 2066 Fillmore, 499 Haight, 458 Geary. Due to adding machine only carrying six figures,



(Testimony of Nick W. Maroosis.)

the seventh figure was omitted. Original file was 713.038, should be 1713.038, the difference being of exactly 1000 which is the omission of the seventh line by adding machine tape.

Q. (By Mr. Grupp): Mr. Maroosis, these taxes referred to in plaintiff's exhibit 5 and these returns were by you filed on the same day, were they not? A. To the best of my knowledge.

Q. Those penciled notations, were they in your handwriting? A. Yes, it is.

Q. That was attached to the amended return when you filed it? A. Yes, sir.

Q. When did you note that error or omission of the 1000 from the figure on your original return?

A. To the best of my knowledge it was late that afternoon, same afternoon, although I am not too positive about it.

Q. You then immediately filed as an amended return showing the 1000 gallons and paid taxes on it? A. Yes, sir. [23]

Q. Now. Mr. Maroosis, calling your attention to the 2nd day of May—incidentally, did I understand correctly, plaintiff's exhibit 5, in evidence, being that tax return and the amendment thereto was a complete return of all distilled spirits held in the three stores then owned and operated by you in San Francisco? A. That is correct.

Q. And included the 100 cases of Three Rivers?

A. That is correct.

Q. Incidentally, was your store on Geary Street open on the 1st of May. A. No.

(Testimony of Nick W. Maroosis.)

Q. Was your store on Geary Street open on the 2nd of May?      A. No.

Q. When did it—how long was it closed?

A. Two days.

Q. Was it April or May?

A. April 1st it was closed and April 2nd it was closed. We opened the 3rd of May—the 3rd of April, excuse me.

Q. In other words, immediately after this floor stock tax was taken the store remained closed two days?      A. That is correct.

Mr. Collett: Let me understand you, I heard you say the 1st or 2nd of May?

Mr. Grupp: April 1st.

The Court: It wasn't closed May 1st? [24]

A. No.

Q. (By Mr. Grupp): Was there any special purpose in keeping it closed at that time?

A. No, just to readjust stock and compile figures and such as that. There is a lot of work to taking an inventory, considerable work. To the best of my knowledge it shouldn't have been closed two days, should have been one; but if I recall correctly, April 1st or April 2nd may have fallen on Sunday, and if it did that would be a reason for the two day closing. Really only should be closed one day, but I think if the calender is checked you will find one of those two days would be a Sunday.

Q. Mr. Maroosis, you then had 30 days within which to file this return, and you filed it on May 1st?

(Testimony of Nick W. Maroosis.)

A. Yes, sir. Prior to May 1st. The day prior.

Q. Was that mailed?

A. It was taken in both instances, I believe, to their office, the Office of the Collector of Internal Revenue on McAllister Street.

Q. Their stamp return shows the 1st of May, I notice.

Q. There were so many people filed that last day, lots of times they don't get to it until the following day.

Q. In any event, calling your attention to the 2nd day of May, 1944, at that time did you see any of the men from the Alcohol Tax Unit?

A. Well, it comes back to that Sunday again. I don't remember [25] whether it was the 2nd or 3rd I saw Mr. Hedrick.

Q. 2nd of May?

A. Was it? It is either the 2nd, 3rd or 4th Mr. Hedrick was there.

Q. But in the early part of May Mr. Hedrick came to the store at 458 Geary? A. Yes.

Q. Did he have three or four men with him—did you have a conversation with Mr. Hedrick at that time? A. Yes.

Q. In the presence of these other men?

A. Yes.

Q. In the store? A. Yes.

Q. Will you tell us what was said at that time by you and Mr. Hedrick?

A. Mr. Hedrick came in and he said—

(Testimony of Nick W. Maroosis.)

Mr. Collett: I am going to ask counsel to fix the date.

Q. (By Mr. Grupp): Mr. Maroosis, can you tell us the exact date?

A. I cannot tell you the exact date, no, because I don't remember.

Q. Approximately?

A. It was either the 2nd, 3rd or 4th.

Q. Of what month? [26]

A. Of May 1944.

Q. And that was in the Geary Street store?

A. Yes.

Q. Will you tell us what conversation was had?

A. It was about 10:00 o'clock in the morning, somewhere around that time, we opened the store. Mr. Hedrick was standing in the doorway waiting with three or four men. As we came in he brushed by and said, "We are going to take inventory," and they distributed, or Mr. Hedrick distributed the boys at various places and they started to take inventory. I said, "Why don't you take my copy and check the inventory with my copy? I think you will find it much more rapid and correct, if not more correct." Then the conversation between me and Mr. Hedrick was just irrelevant.

Q. Well, didn't it have anything to do with the floor tax?

A. Nothing to do with the floor tax.

Q. Did they take an inventory there, to the best of your knowledge?

A. Yes, sir.

(Testimony of Nick W. Maroosis.)

Q. How long were they in the store?

A. I don't remember. I had to leave.

Q. You left then?

A. Yes. I don't remember exactly when.

Q. Did you subsequently have any conversation with Mr. Hedrick with reference to this inventory?

A. Subsequently? Yes, as a matter of fact it was on that same day he took the inventory, or the following day it seems to me that Mr. Hedrick came in and asked me for my copy of the inventory.

Q. Did you give it to him?

A. Yes, I gave it to him.

Q. Did he remove that copy from your premises?

A. Yes, he did, and he had it for several days. I can set the exact date if I can have one of the exhibits there, the exhibit numbered 2, I believe. He had it from May 2nd until May 4th, I believe, 1944—May 4th, 1944, until October 2nd.

Q. Of the same year?

A. Yes. He had it all of May, all of June, July, August, September, and brought it back on October 2nd.

Mr. Collett: For the purpose of clarification, if your Honor please, the witness has in his hand plaintiff's exhibit 2, is that correct?

A. Yes, sir.

Mr. Collett: You referred to the inventory. Do you mean plaintiff's exhibit 2, or a portion of it, or all of it? I will object to the question, being not clear.

(Testimony of Nick W. Maroosis.)

A. There is only one inventory.

Mr. Collett: There is a recap and a lot of penciled notations there. What do you refer to?

A. There isn't a penciled notation there. A pencil inventory [28] and recap. They are identically the same and can be checked as such.

Mr. Collett: Then as I understand it, you state you gave him the entire matter that is contained in Plaintiff's exhibit 2?

A. Yes, sir.

Q. (By Mr. Grupp): Mr. Maroosis, did you have any conversation with Mr. Hedrick relative to this 100 cases of Three Rivers at any time?

A. Why, yes. As a matter of fact, he brought this copy back and showed us where we were 108 proof gallons overhead, I think. I made some pencil notations of his findings on the back of one of the sheets. And Mrs. Woodward told him at that time they had moved 40 cases.

The Court: How many cases over?

A. Just a minute, your Honor. I believe there was an over declaration of 108.98.

The Court: Are those gallons or cases?

A. Gallons, apparently. These are Mr. Hedrick's figures, not mine.

Mr. Collett: Is that in your handwriting, though?

A. Yes, that is in my writing.

Q. (By Mr. Grupp): Where did you get those figures?



(Testimony of Nick W. Maroosis.)

A. Mr. Hedrick was trying to explain to us why we were 108.98 gallons over and Mrs. Woodward told him we had only moved this [29] inventory—the inventory Mr. Medrick made was apparently on May 2nd, and Mrs. Woodward explained to him in the interim that 40 cases of Three Rivers had been moved out into 458 Geary, and I don't remember his remark or what he said relative to that. Apparently he chose to ignore it.

Q. That left how many cases at Haight Street?

A. 60 cases.

Q. What proof, the Three Rivers?

A. 86 proof.

Q. However, 60 cases 86 proof, do you know how many proof gallons that would be?

A. You will have to say that again.

The Court: Well, I submit, counsel, it is time for a ten minute recess. We will have it.

(Short recess.)

Mr. Grupp: May I have the last question?

(Question read by the reporter.)

A. 123.84.

The Court: 123.84 proof gallons in 60 cases?

A. Yes, sir.

Q. (By Mr. Grupp): So that the physical inventory that was taken by Mr. Hedrick on the 2nd or 3rd or 4th, one of those dates, as you stated, showed you had overstated, according to their inventory, 108 proof gallons?

A. Yes, sir. [30]



(Testimony of Nick W. Maroosis.)

Q. If they took into consideration the 60 cases remaining at that time in Haight Street, they would have completely wiped out that overstatement?

Mr. Collett: I object to that.

The Court: In the first place, that is leading, and in the second place it isn't correct. 108 proof gallons doesn't completely wipe out 123.84 proof gallons.

Mr. Grupp: It is the other way. 123 wipes out 108.

The Court: Well, let the witness testify.

A. Mr. Hedrick came up to the office and is showing Mrs. Woodward and myself this overcharge and apparent discrepancy in our figures. Mrs. Woodward showed him that we still had 60 cases that had been—40 cases had been moved and we had the 60 cases remaining, and as a matter of fact at that time Mr. Hedrick himself had knowledge of it because a month prior to that time, or over a month prior to that time when he was taking his inventory at 458 Geary he not only got a complete inventory of the number of cases of Three Rivers we had on hand April 1st, but he secured a list of 232 cases of the serial numbers of the Three Rivers we had on hand. The serial numbers included 100 cases that were at the Haight Street store on April 1, 1944.

Mr. Collett: If the Court please, I am going to move at this time the entire answer be stricken on

(Testimony of Nick W. Maroosis.)

the ground that there was no question and I object to the answer. [31]

The Court: It is voluntary, and, in addition, is confusing to me. That is stricken in which he says he knew it because of something that happened the month before.

Q. (By Mr. Grupp): All right, Mr. Maroosis, let's go back and get this plaintiff's exhibit 2 in evidence. Plaintiff's exhibit 2, as you testified, showed (that is the written inventory) showed you had on hand 2056 cases in the Haight Street store, is that correct? A. No.

Q. I mean in the Geary Street store.

A. Yes, sir.

Mr. Collett: I don't want to object, but I would like to have counsel ask questions and not testify.

Mr. Grupp: It is purely a matter of mathematics.

Mr. Collett: It isn't a matter of mathematics. The inventory is there. Let him answer the questions and not tell him.

The Court: What I say to counsel examining now is, I find, in cases frequently of assistance to opposing counsel when his witnesses are under examination. But I wish to say the following as to leading questions: Whenever counsel is not interested in whether I pay any attention to the answer to the leading question, counsel will indulge in a leading question. Whenever counsel is anxious I pay attention to the answer, counsel will let the witness make

(Testimony of Nick W. Maroosis.)

the answer and will not give a leading question. The reason is that the Court never knows [32] whether it is the attorney who is testifying, the attorney not under oath, and the witness being complacent, or the witness is actually testifying. So counsel themselves will respectively be the censors of their questions.

Q. (By Mr. Grupp): Mr. Maroosis, you have plaintiff's exhibit 2 in your hands? A. Yes.

Q. Will you then refer to pages 33, 36 and 37 and tell us, if you will, the number of bottles, total number of bottles of Three Rivers reflected in the written inventory.

The Court: Hasn't that already been testified to? If it has been testified to, there is no necessity—whenever anything is testified to, there is no necessity to put it in again even by leading questions.

Mr. Grupp: It is leading to the next question.

The Court: Ask the next question and forget the repetition for we will never get through.

Q. (By Mr. Grupp): Mr. Maroosis, calling your attention to May when you handed Mr. Hedrick the inventory of Haight, did you at that time give him any other documents?

A. Yes, I did. I gave Mr. Hedrick a copy of the serial numbers of the cases of Three Rivers whiskey, which was—it was at 232, as I recall.

Q. How were those serial numbers listed?

A. They were listed single, each serial number its own. [33]

(Testimony of Nick W. Maroosis.)

Q. Where were the Three Rivers, 231 cases of Three Rivers, at that time?

Mr. Collett: I object. We have been talking about 2056 bottles. There has been nothing said about cases. What cases are being talked about? The question is irrelevant.

The Court: Overruled.

Q. (By Mr. Grupp): Where were the 231 cases at the time you gave Mr. Hedrick the serial numbers?

A. 100 of the 231 were at the Haight Street store, 499 Haight Street, and the balance of those cases were at 458 Geary Street.

Q. The 2056 bottles that were at the Haight Street store, according to that inventory, constitutes how many cases?

A. There were not 2056 cases, there were——

Q. Geary Street. A. 2056 bottles.

Q. How many cases is that?

A. That would be approximately 175½ cases.

Q. Divided by 12 is the way you get your answer? A. Yes, sir.

Q. That would be 171 cases and 4 bottles?

A. Something like that.

Q. But the serial numbers you gave Mr. Hedrick were 231 cases. A. Yes, sir.

Q. Mr. Maroosis, now subsequently to the day of the inventory by Mr. Hedrick, did you thereafter receive any documents from [34] Mr. Hedrick relative to your floor tax rate?

(Testimony of Nick W. Maroosis.)

Mr. Collett: If the Court please, I am going to object to that as being ambiguous in this sense, that he has testified Mr. Hedrick first came there around the 2nd, 3rd, or 4th or 5th of May. We don't know how long Mr. Hedrick was there, how long the inventory took to complete, in order to try to fix this particular question. On that ground I object.

The Court: Overruled. As I understand it, this question requires merely a yes or no answer. You may read the question, Mr. Reporter.

(Question read by the reporter.)

A. Yes, any number——

The Court: You have answered the question?

A. Yes.

Mr. Grupp: Your Honor, I understand during recess I requested of counsel the originals of certain correspondence and letters that passed from Mr. Maroosis to the Internal Revenue, Alcohol Tax Unit, and I understand those originals will be produced by Mr. Hedrick tomorrow morning.

Mr. Collett: We would bring them. I don't know what the materiality of them would be. We can bring all the correspondence, if the Court please. Might show us the copy as we go along. This is an original document. This is a copy. This is a copy.

Mr. Grupp: You have examined this? [35]

Mr. Collett: Sure.

The Court: If you are going to refer to them, have it marked first.

(Testimony of Nick W. Maroosis.)

Mr. Grupp: May I have this document first (it has no title) marked plaintiff's exhibit for identification next in order?

(Whereupon the document referred to was marked plaintiff's exhibit No. 6, for identification.)

Q. (By Mr. Grupp): Mr. Maroosis, I hand you plaintiff's exhibit No. 6, for identification, and ask you if that document was handed you by Mr. Hedrick? A. Yes, sir.

Q. And did you have a discussion with Mr. Hedrick relative to the figures contained in that document? A. Yes, I did.

Q. Do you recall when that was, Mr. Maroosis?

A. No, I do not.

Q. Have you any approximation?

A. No, I would be afraid to venture a guess.

Q. Relative to the filing of the assessment which was levied, or the first assessment which was levied, was that before or after that time, do you know?

A. I believe this was the first assessment that they offered me, first assessment Mr. Hedrick came in with, I should say.

Mr. Grupp: Do you have copies of those assessments, Mr. [36] Collett? I think there were three different assessments levied and changes made. Well, is there any question about the document the witness has as being the basis of the first assessment? Well, in that event, might I at this time



(Testimony of Nick W. Maroosis.)

offer this in evidence, Mr. Collett? Do you have any objection?

Mr. Collett: No.

The Court: Exhibit 6 is offered?

Mr. Grupp: Yes, your Honor.

The Court: No objection, admitted.

(Whereupon document marked for identification was admitted into evidence as plaintiff's exhibit No. 6.)

Q. (By Mr. Grupp): Now, Mr. Maroosis, I call your attention to plaintiff's exhibit 6 and note thereon that on page 2 the total amount due as listed here for taxes and penalties, \$13,572.76. I specifically call your attention to the first page of that document, referring to that portion which reads, "Taxpayer's inventory and return form 758 for November 1, 1942, 1,080.86 P.G."—referring to proof gallons? A. Yes, sir.

Q. Specifically with reference to that notation did you have any conversation with Mr. Hedrick?

A. Yes, I did.

Q. What was that? Who was present at that conversation?

A. Mr. Hedrick and Mrs. Woodward and myself.

The Court: November 1st of 1942? [37]

Mr. Grupp: Yes, that is the starting of it, yes, sir, November 1, 1942.

Q. Where was that conversation had?

A. I believe it was held down at Mr. Hedrick's offices down on Battery Street some place.



(Testimony of Nick W. Maroosis.)

Q. Will you state what was said at that time?

A. I tried to explain to them that the inventory that they were using in their calculations was the 458 Geary Street inventory, that they were using the wrong inventory, the wrong store inventory, and we showed them several other mistakes they were making here, but they only acknowledged the one, apparently, because subsequently we received an adjustment as against this sheet.

Q. Mr. Maroosis, now, under plaintiff's exhibit 6 there is an item showing purchases as per the ATU—that is Alcohol Tax Unit, is that correct?

A. Yes.

Q. Audit of invoices in wholesale liquor dealers files?      A. Yes, sir.

Q. Showing by that that you had made purchases, according to that audit, of \$203,167.38?

A. That is correct.

Q. Do you keep purchase records?

A. Yes, sir.

Q. In what form are those records? [38]

A. We have a double entry check system.

Q. I note here that the next item appearing on plaintiff's exhibit 6, amount of money after the number I have read, is "Distilled Spirits Purchased 11/1/42 to 3/31/44 per taxpayer's records is \$203,208.51."      A. Yes, sir.

Q. That is \$40.13, I believe, but I couldn't calculate—more purchases shown on the records of Mr. Maroosis than by the audit of the Alcohol

(Testimony of Nick W. Maroosis.)

Tax Unit of the wholesalers' books. Now, Mr. Maroosis, that figure of \$203,208.51 is a correct figure is it not? A. Very correct.

Q. Taken from your books? A. Yes, sir.

Q. I also note here that there is an item of the sales of distilled spirits—rather, total sales I am referring to for the period November 1, 1942, to March 31, 1944, of \$276,328.51 A. Yes, sir.

Q. Do you know where that figure was obtained?

A. From our books.

Q. From your own records? A. Yes, sir.

Q. So that your records disclosed the purchases used in these calculations by the Alcohol Tax Unit?

A. Correct. [39]

Q. Your record disclosed this gross sales used by the Alcohol Tax Unit per these calculations, is that correct? A. That is correct.

Q. The starting inventory which was used in plaintiff's exhibit 6, as of November 1, 1942, which is 1080.86 proof gallons, was a record taken from your books? A. That is correct.

Q. I notice, and I believe it has been stipulated to, that the starting inventory on Geary was 631.93 proof gallons, and that is the figure that should have been used? A. That is correct.

The Court: Starting figure for Geary Street on what date?

Mr. Grupp: November 1, 1942.

Mr. Collett: That was a stipulation, if the Court please. Is there any doubt in your mind about it?

(Testimony of Nick W. Maroosis.)

Mr. Grupp: Oh, no.

The Court: How many gallons?

Mr. Grupp: 631.93 gallons.

Mr. Collett: You are taking a lot of time about something we have stipulated to.

Mr. Grupp: Now we offer for identification the letter of April 28 from the Treasury Department to Mr. Maroosis.

The Court: Exhibit 7 for identification.

(Whereupon the letter referred to was marked plaintiff's exhibit No. 7 for identification.) [40]

The Court: What is it? What date?

Mr. Grupp: April 28, 1945.

Mr. Collett: May I see it?

Mr. Grupp: Certainly. I have no objection to your reading them, but I offer them because they are going in and it will save time.

Q. Did you receive this letter on or about the date it bears? A. Yes, sir.

Mr. Grupp: We offer in evidence plaintiff's exhibit 7.

Mr. Collett: No objection.

The Court: Admitted.

(Whereupon letter of 4/28/45, Treasury Dept. to Mr. Maroosis was marked plaintiff's exhibit 7 in evidence.)

Q. (By Mr. Grupp): Now, Mr. Maroosis, I note that in plaintiff's exhibit 6 the total tax and

(Testimony of Nick W. Maroosis.)

penalties claimed by the Alcohol Tax Unit was \$13,572.76; and on April 28, 1945, I note from plaintiff's exhibit 7 (you received this letter) reference is made to your calling in person at the office on April 26, 1945, about a notice or demand for additional tax and penalty in the amount of \$10,498.81. Have you any knowledge, Mr. Maroosis, as to what occasioned a reduction from the original demand of \$13,572.76 to \$10,498.81?

A. They were using the wrong inventory in their calculations.

Mr. Grupp: We offer the letter of June 29, 1945, from the Treasury Department to Nick W. Maroosis as plaintiff's [41] for identification next in order.

(Whereupon letter referred to was marked plaintiff's exhibit 8 for identification.)

Q. (By Mr. Grupp): I will ask you, Mr. Maroosis, if you received plaintiff's exhibit 8 for identification on or about the date that letter bears?

A. Yes, sir.

Q. June 29, 1945?                      A. Yes.

Mr. Grupp: Exhibit 8 is now offered as next in evidence.

Mr. Collett: No objection.

The Court: Admitted.

(Whereupon letter of 6/29/45, Treasury Dept. to Mr. Maroosis, was admitted into evidence as plaintiff's exhibit 8.)

Mr. Grupp: Do you have the agreement to pay

(Testimony of Nick W. Maroosis.)

the additional assessment? Our copy is not executed.

Mr. Collett: I don't get the materiality. If you want to stipulate, he paid them all. They were paid.

Mr. Grupp: Our purpose in offering this is the fact that now we find that the taxpayer finally paid \$8,478.65, which I believe is the amount that was ultimately paid.

Mr. Collett: Yes.

Mr. Grupp: Our purpose is to show these reductions for reasons which will be more obvious later on.

Mr. Collett: As I recall, the answer alleges payments made, [42] and I think we admitted them, didn't we?

Mr. Grupp: I offer this as next in order after the previous communications.

Mr. Collett: No objection.

Q. (By Mr. Grupp): Now, Mr. Maroosis, you thereafter filed a claim, or had your accountants file a claim for refund? A. Yes, sir.

Q. After you paid this tax? A. Yes, sir.

Mr. Grupp: May I just pass that for a moment, your Honor? We will fix that claimed refund.

Q. Mr. Maroosis, you sold Joseph's Liquor Store at 458 Geary Street, did you not?

A. Yes, sir.

Q. When did that sale take place?

A. May 25, 1944.

(Testimony of Nick W. Maroosis.)

Q. That was within the month that these returns were made and the inventories were taken, is that correct?      A. Yes, sir.

Q. And at that time of the sale of that store the State Board of Equalization conducted an audit, did they not?      A. Yes, sir.

Mr. Grupp: I think I could approach that more expeditiously if I referred again to this correspondence, this claim, for all these documents are attached to the claim. There is no [43] question but what this claim was filed? I think it was admitted.

Mr. Collett: You filed the complaint, you should know.

Mr. Grupp: I mean it was filed with the Internal Revenue Department with all attached exhibits?

Mr. Collett: Isn't that admitted in the answer?

Mr. Grupp: I think it is. We will offer a copy of the claim and the attached exhibits, which was filed, for identification as plaintiff's next in order.

Mr. Collett: You have checked that copy with your copy of the complaint, and it is a true copy?

Mr. Grupp: It is a true copy. As a matter of fact, I think the complaint was copied from that. I think this will be No. 9 for identification.

(Whereupon document was marked plaintiff's Exhibit 9 for identification.)

Mr. Grupp: With counsel's permission, I should like to withdraw Exhibit No. 9, if I might. I don't have another copy and I may want to look through it this evening.



(Testimony of Nick W. Maroosis.)

The Court: It has not been admitted yet.

Mr. Grupp: That is why I didn't want to offer it yet.

Q. Mr. Maroosis, I hand you plaintiff's Exhibit 9 for identification, and I will ask you if that was filed by you with the Department of Internal Revenue, Alcohol Tax Unit, on the date it bears?

A. Yes, sir. [44]

Q. August 6, 1948?                      A. Yes.

Q. Is that correct?                      A. That is correct.

Mr. Grupp: We will offer in evidence plaintiff's Exhibit 9, for identification, as plaintiff's exhibit next in order.

The Court: Exhibit 9 offered.

Mr. Collett: No objection.

The Court: Admitted.

(Whereupon document dated 8/6/48 was admitted into evidence as plaintiff's exhibit No. 9.)

Q. (By Mr. Grupp): Now, Mr. Maroosis, we were referring a moment ago to an audit by the State Board of Equalization, and I will ask you if the photostatic sheets attached to plaintiff's exhibit 9 is a certified copy of that audit as received by you from the State Board of Equalization?

A. Yes, it is.

Q. Now, Mr. Maroosis, did you have that audit checked in any way?

A. Yes, I was quite alarmed and surprised when I got an additional fee due \$750, so we spent three weeks on it, and after she compiled her figures



(Testimony of Nick W. Maroosis.)

and we found that the State Board of Equalization's figures were reasonably close to hers, subsequently we paid the fee of \$750.

Q. Do you know when that fee was paid?

A. No, I don't know. It was shortly thereafter.

Q. And was that before any assessment was levied against you by the Alcohol Tax Unit?

A. Oh, yes.

Mr. Grupp: Might I at this time offer the original letter from the State Board of Equalization, August 25, 1944, for identification? It has a note on there.

Mr. Collett: Don't ask me.

Mr. Grupp: I merely showed it to you.

Mr. Collett: You have offered the claim in evidence. It is in the claim.

Mr. Grupp: I offer this for identification for a special reason, because it does have notations as to when it was paid, and that will clear up that other point.

(Whereupon document was marked plaintiff's exhibit 10 for identification.)

Q. (By Mr. Grupp): Mr. Maroosis, I hand you plaintiff's exhibit 10 for identification. That is an original letter from the State Board of Equalization, is that right? A. Yes, sir.

Q. I call your attention to a notation on the letter in pencil. In whose handwriting is that?

A. I believe that might be Mrs. Woodward's.

(Testimony of Nick W. Maroosis.)

Q. Who is Mrs. Woodward?

A. She is my accountant.

Q. Would you read that pencil notation? [46]

A. "\$750 paid, check 2071, December 29, 1944."

Q. Does that refer to your check number?

A. Yes, sir.

Q. For the sum of \$750? A. Yes, sir.

Mr. Collett: I am going to object to that testimony as being purely hearsay. The best evidence is the check itself, and he doesn't know whose handwriting it is in.

The Court: Objection sustained. Was exhibit 10 offered?

Mr. Grupp: Exhibit 10 I will ask permission at this time to withdraw so that the witness may take it with him to produce the check in the morning.

The Court: Exhibit 10 for identification is rejected by the Court. Plaintiff may take such for the purpose stated.

Q. (By Mr. Grupp): Now, Mr. Maroosis, will you explain to the Court the type of liquor store that Joseph's was——

A. Very high class.

Q. ——as of November 1, 1942, to April 1, 1944?

A. It was a very high class store. It dealt mostly in imported liqueurs, and as a matter of fact, catered to some of the finest people in San Francisco and looked more like a jewelry store than a liquor store.

Mr. Collett: I object to the answer. It is purely a conclusion of the witness, and the best evidence as

(Testimony of Nick W. Maroosis.)

to the type of goods handled in the store is the inventory and audit [47] and the prices that might be attached to it.

The Court: Motion denied. The answer will stand for what it is worth. It might not be as persuasive as some of the other evidence, but at least it is in.

Q. (By Mr. Grupp): Do we have a record of sales of Joseph's?

A. It is in my files, the sales at Joseph's.

Q. Will you step down and get it? Mr. Maroosis, looking at your inventory, plaintiff's exhibit 2 in evidence, you have examined that inventory before?

A. Yes, sir.

Q. With reference to the liqueurs as distinguished from whiskey or other alcoholic beverages, do you have a list of such liqueurs in that inventory?

A. Surely.

Q. That store was located where, Mr. Maroosis?

A. On Geary Street directly across the street from the Geary Theater.

Q. Do you have any documents here from which you can tell the Court what your average monthly sales for a given period, let us say three months, of beer was in that store?

A. Practically negligible. We sold very little beer in that store. That store was a downtown store, and it is only in neighborhood stores they sell beer.

Mr. Collett: I object to the answer as not re-

(Testimony of Nick W. Maroosis.)

sponsive. He was asked if they had any record. [48]

The Court: Let me hear the question.

(Question read by the reporter.)

The Court: Strike it out, and the witness will pay particular attention to the question and answer the question in every case you can answer it, yes or no.

Q. (By Mr. Grupp): Do you have any records?

A. Yes.

Q. Do you have them in court here from which you can testify?

A. Yes, they could be here. I wouldn't swear they are. I am trying to get along with this thing as well as everybody else. I don't know.

Q. You operated, Mr. Maroosis, Joseph's for how long?

A. Oh, approximately—we operated it approximately, I would say, somewhere in the neighborhood of two and a half years, possibly.

Q. And you operated during that same time two other liquor stores in San Francisco? A. Yes.

Q. Retail package stores? A. Yes.

Mr. Collett: If the Court please, this has been asked and answered at least three times.

Q. (By Mr. Grupp): Can you tell us from your own knowledge the comparative sales of beer, for example, in the Fillmore Street store as compared with the Geary Street store in a [49] given period?

A. Yes, sir.

(Testimony of Nick W. Maroosis.)

Mr. Collett: I object to the question. The witness stated the records are here, or should be here, and the best evidence are the records.

The Court: Well, he may answer the question yes or no. When you get that, I don't know whether it will help us any. He has answered it yes. You may proceed.

Q. (By Mr. Grupp): Can you give us any comparison from your own knowledge of the difference in the sales of that particular type of merchandise, namely, beer? A. Yes, sir.

Mr. Collett: My same objection?

The Court: He has answered yes. That is enough.

Q. (By Mr. Grupp): Will you give us such comparison, if you know?

A. Yes. The Geary Street——

The Court: Just a moment.

Mr. Collett: I object to the question as not being the best evidence, calling merely for the conclusion and opinion of the witness. The best evidence would be the records of this particular plaintiff and he stated the records are here. Let's testify from the records.

The Court: I am not too sure whether the objection is well taken. I am inclined to think technically the witness [50] may answer. I will let witness' counsel know where records are available the oral statement will not be convincing. If you want to take time to have him answer the question—I will overrule the objection in practice.

(Testimony of Nick W. Maroosis.)

Mr. Grupp: I will withdraw the question in the face of that. I know we have records some place. We will produce them. We have so many records, I think some of them are quite varied.

A. May I answer something?

Mr. Grupp: No, don't volunteer anything, Mr. Maroosis.

Q. Mr. Maroosis, can you tell us what the average proof of liqueurs such as were handled at Joseph's was, the average proof?

A. I would say the average proof would probably be somewhere——

Mr. Collett: Oh, I make the same objection.

The Court: Overruled.

A. The average proof would be somewhere around 45 to 50 proof.

Q. And in whiskeys?

A. In whiskeys the average would be probably around 80—in Joseph's it would be probably around 87 proof, 86 maybe.

Q. You stated you sold Joseph's in May, May 25, 1944, Joseph's Liquor Store? A. Yes, sir.

Q. At the time that that was sold was there an inventory taken of the merchandise on hand?

A. Yes, sir.

Mr. Grupp: Might we offer this document marked "Inventory, [51] May 25, 1944" for identification next in order?

The Clerk: No. 10 was rejected. Do you want to continue that as No. 10?



(Testimony of Nick W. Maroosis.)

The Court: It will still be called exhibit 10 for identification.

The Clerk: This is exhibit 11 for identification.

(Whereupon inventory of May 25, 1944, was marked plaintiff's exhibit No. 11 for identification.)

Q. (By Mr. Grupp): Mr. Maroosis, I hand you plaintiff's exhibit No. 11 for identification.

A. Yes, sir.

Q. And ask you what that document is.

A. That document is the balance of merchandise that was left at the sale of Joseph's, 458 Geary Street, May 25, 1944.

Q. I notice that is a typed inventory.

A. Yes, sir.

Q. Was there a pencil inventory?

A. Yes, sir.

Q. Do you have that? A. Should have it.

Mr. Collett: I will ask that the witness answer the question.

A. Yes.

Q. (By Mr. Grupp): Mr. Maroosis, I notice on this there is a certification of this by yourself. Did you compare this with [52] the pencil copy?

A. Yes, sir.

Q. Now, do you know where the pencil copy of this inventory is?

A. I believe in my briefcase. It may be up in the office.



(Testimony of Nick W. Maroosis.)

Q. Do you know that this is a correct inventory of Joseph's as of the date it bears, May 25, 1944?

A. Yes, sir, I know it is for two reasons. One reason is that Mr. DiMaggio checked it himself, Mr. DiMaggio's employees checked it, Mr. DiMaggio's accountant checked it, and then they questioned me to sign it to be sure it was correct, as it was.

Q. This was taken for the sale purpose?

A. Yes, sir, for the sale at Geary on that particular day, May 25, 1944.

Mr. Grupp: We will offer plaintiff's exhibit 11 in evidence as exhibit next in order.

Mr. Collett: I will ask that the—I object to it. It is a pencil inventory and the actual inventory taken the witness answers it is here and available, and I ask that they produce it.

Mr. Grupp: We will produce it. Your Honor, might this be admitted subject to counsel's checking it against the inventory?

The Court: It is within a couple of minutes of adjournment. I should like to take under advisement this offer and objection until tomorrow morning. Perhaps you can have it [53] supported by the penciled notation.

Mr. Grupp: I think we can, your Honor.

The Court: If you can, that may throw another aspect on it. If you can't, that will be something else again. All right, ruling reserved. Exhibit 11 for identification offered, objected to, and ruling reserved.

(Testimony of Nick W. Maroosis.)

Mr. Grupp: Might I, your Honor, with the Court's permission, withdraw plaintiff's exhibit 9?

Mr. Collett: No objection.

The Court: Exhibit 9 may be loaned to plaintiff's counsel over the evening, not withdrawn.

Mr. Grupp: I meant borrow it.

The Court: All right. Now, counsel, I am concerned about this case and the calendar. First, I hope you spend the time over the evening thinking of questions that you can eliminate rather than considering additional questions to ask. Many of the questions today have been unnecessary. They have been merely prelude to another question and have been repetitious or intended as premature argument. Try to cut them out. That is one. Second, I have set for tomorrow for trial a case that is a criminal case, United States vs. Manning, which I expect to proceed with at 10:00 o'clock. I am going to let you people come here at 9:30. We will see what happens to that case and how much of an interruption you have. You may have a substantial interruption and you may not. The trial of this cause [54] is adjourned until tomorrow morning at 9:30.

(Thereupon an adjournment was taken until Thursday, November 17, 1949, at 9:30 a.m.)

November 17, 1949

The Clerk: Maroosis vs. Smyth, on trial.

The Court: You may proceed, gentlemen.

## NICK W. MAROOSIS

resumed the stand, previously sworn.

Direct Examination  
(Continued)

By Mr. Grupp:

Q. Your Honor, might the record show I am now returning exhibit 9 which I borrowed from the clerk?

The Court: It may.

Q. (By Mr. Grupp): Mr. Maroosis, I believe at the close of the session yesterday we had asked whether you had the penciled inventory, defendant's exhibit 11 for identification; that was the type-written copy of the inventory of May 25, 1944. Have you made a search of the penciled copy of that inventory to your record?

A. Yes, I have.

Q. Have you been able to find it? A. No.

Q. Now, would you explain to the Court the purpose of taking that inventory which you now hold? A. This inventory was taken——

The Court: Is that exhibit 11 you are referring to?

Mr. Grupp: I am sorry, I should have referred to that.

A. This inventory was taken by Mr. DiMaggio, an accountant, and myself, for the purpose of selling this particular merchandise to them. They took the inventory, they compiled it, it was [55] type-written into three copies which—on which money they paid with, they paid this money. We also,

(Testimony of Nick W. Maroosis.)

each one of us, certified the copy to each other, and that was the basis on which the money, the basis on which the store was sold. This merchandise was sold to them, they paid for it, and naturally must be accurate. We checked it.

Q. I see. Well, then, the inventory was taken particularly for the purpose of making the sale?

A. Yes, sir.

Q. And you have not been able to find the copy?

A. No, sir.

Q. That is the original?                      A. Yes, sir.

Mr. Grupp: We offer in evidence at this time plaintiff's exhibit 11 for identification.

Mr. Collett: May it please the Court, I object to that as being irrelevant, immaterial, incompetent; it apparently shows the transaction as related to the sale of certain merchandise to Mr. DiMaggio. No evidence whatsoever to show that this was all the merchandise that was concerned with this particular store from the period subsequent to April 1 towards indicating anything with regard to the accounting of that merchandise, simply an inventory was sold to Mr. DiMaggio, and on that ground we object as being incompetent, irrelevant and immaterial, bearing not at all on the issues. [56]

The Court: There is no evidence that there was no goods removed other than through retail sales in the ordinary course of business.

Mr. Grupp: No, I was about to go into that. The purpose is merely to show what was in the

(Testimony of Nick W. Maroosis.)

store on May 25. There was merchandise removed and the evidence will immediately show——

The Court: I will reserve ruling until I hear——

Mr. Collett: Further than that, if the Court please, the witness has stated it was a sale, a merchandise inventory of a sale, not merchandise to the particular individual, and the Court is called attention there is no evidence that there was any merchandise removed; on the contrary, no evidence that this includes all of the merchandise.

The Court: I say, there has been no evidence, so I am reserving ruling.

Q. (By Mr. Grupp): Mr. Maroosis, after the inventory which you took, which is plaintiff's exhibit 2 in evidence, or which you took on April 1, 1944, you purchased merchandise on the open market for 458 Geary Street, did you not?

A. Yes, sir.

Q. You conducted that business thereafter?

A. Yes, sir.

Q. And subsequent to the Alcoholic Tax Unit men taking their physical inventory on either May 2, 3 or 4, as you testified, did you thereafter purchase merchandise on the open market or [57] from wholesalers for that store? A. Yes, sir.

Q. Now, subsequent to April 1, 1944, until what time—what did you do, did you yourself actually buy and sell merchandise in the same manner as you did previous to April 1, 1944? A. Right.

Mr. Collett: If the Court please, I object to this

(Testimony of Nick W. Maroosis.)

line of questioning; again counsel is testifying, and request that he give yes or no answers. I again call attention to the previous——

The Court: I would prefer you asked the witness what was done other than for counsel suggesting to the witness what was done.

Q. (By Mr. Grupp): Mr. Maroosis, would you explain then what was done with that business subsequent, referring to 458 Geary Street, subsequent to April 1, 1944? A. Well,——

Mr. Collett: I object to that question.

The Court: Overruled.

A. On April 1 we took our inventory, that was the particular date that I took physical control at 458 Geary. Previous to that I was a partner at 458 Geary.

Q. Go forward from there, please.

A. From that point on I took the physical control of it myself, maintained all the records, had complete supervision of the clerks, and the reason that I took the physical control was for [58] the purposes of selling or liquidating the store. We secured a buyer, I believe on or about the—somewhere in the early part of May. Mr. DiMaggio wanted to buy the place on the 25th day of May. We had arrived at it prior to the 25th, but it was effective on the 25th. We did take the physical inventory for the purpose of selling the establishment. Mr. DiMaggio and his accountants and myself took the inventory. The inventory was typed out in three copies of which——



(Testimony of Nick W. Maroosis.)

Q. I was particularly interested in reference to the operation of the business between the dates that you have now referred to, April 1 and May 25, and removal of merchandise, if any was removed.

A. Well, at the particular time on May 25, shortly prior to May 25, Mr. DiMaggio—we had considerable merchandise on hand. We had some odd \$40,000; I wouldn't be quoted, but somewhere in that neighborhood. Mr. DiMaggio did not have this much money, so he suggested that we remove some of the inventory, which we did on May 25. The balance of the merchandise was bought and paid for by Mr. DiMaggio.

Q. Mr. Maroosis, was that merchandise—you say it was removed; was that removed before or after plaintiff's exhibit 11 for identification was taken?

A. Well, it was on or about that same day, May 25.

Q. Does the plaintiff's exhibit 11 for identification include merchandise that was subsequently removed?      A. No, sir. [59]

Mr. Collett: If the Court please, I am going to ask at this time, renew my objections to the inventory and ask——

Mr. Grupp: I haven't offered it again yet.

The Court: Well, counsel, your objection is premature.

Mr. Collett: I am going to ask the Court the witness be directed to produce the records of the business for the period from April 1 to May 25,

(Testimony of Nick W. Maroosis.)

showing all purchases and all disposition of merchandise.

The Court: I will hear what is offered first, and then we can cross the bridge.

Mr. Grupp: I have here two—what purports to be an original and copy of a document titled “Merchandise Transfer Sheet,” dated May 25, 1944, and then under that—to that is attached is another dated the same date, and an adding machine tape with some notes on it which I would at this time ask to be marked as plaintiff’s exhibit 12 for identification.

The Clerk: Plaintiff’s exhibit 12 for identification.

Mr. Grupp: Might at this time have marked for identification another set of two originals and two copies of “Merchandise Transfer Sheets,” one dated May 23, 1944, and one dated May 25, 1944, as plaintiff’s exhibit next in order for identification, your Honor.

The Clerk: Plaintiff’s exhibit No. 13 for identification.

Mr. Grupp: While counsel is looking at those, I ask this book which I have, have the Clerk mark it plaintiff’s exhibit [60] for identification next in order.

The Court: You may.

The Clerk: Plaintiff’s exhibit No. 14 for identification.

Mr. Grupp: One of the duplicates seems to have

(Testimony of Nick W. Maroosis.)

been torn from one of them; might I add that to Plaintiff's Exhibit 12 for identification, your Honor?

The Court: What do you wish to do?

Mr. Grupp: When I refer to Plaintiff's Exhibit 12 for identification, I noticed that there was two originals and one duplicate. We find the duplicate has been torn from it, and should be two duplicates.

The Court: That may be added. Exhibit 12 for identification is completed by the addition of one duplicate, so now it has two originals and two duplicates as directed by attorneys for plaintiff.

Q. (By Mr. Grupp): Mr. Maroosis, I am handing you Plaintiff's Exhibits 12 and 13 for identification and ask you what those represent.

A. Those represent the portion of the whiskey that was transferred out of 458 Geary to one of the—for No. 499 Haight Street and No. 2066 Fillmore Street.

Q. You say "one of the"; would you refer to the exhibit that refers to?

A. Exhibit No. 12 is from 458 Geary to 2066 Fillmore Street, and Exhibit 13 is from 458 Geary to 499 Haight Street. [61]

Q. Now, I note that the documents which comprise these two exhibits, 12 and 13 for identification, are printed and entitled "Merchandise Transfer Sheet, Bi-Rite Liquor Stores."

A. That is right.

Q. They are regular forms you used in the ordi-

(Testimony of Nick W. Maroosis.)

nary course of your business?           A. Yes, sir.

Q. And is the manner in which the transfers are here posted done in the normal and regular course of the operation of your business?

A. Yes, sir.

Mr. Grupp: We offer in evidence Plaintiff's Exhibits 12 and 13 for identification.

Mr. Collett: You are offering them in evidence?

Mr. Grupp: Yes.

Mr. Collett: We object to it, if the Court please, irrelevant, immaterial, and incompetent, that the best record, the best evidence of the transactions of this particular concern from the period April 1, 1944, to May 25, 1944, is the records of the business showing the purchases from the time of the inventory that is at issues, the sales and other dispositions as shown in the books of account. This evidence is only incidental. There is no proof as to when they were drawn up, might be drawn at any time, and on that basis the objection is made.

Mr. Grupp: I will lay further foundation, your Honor. [62]

The Court: All right, you may.

Q. (By Mr. Grupp): Mr. Maroosis, I hand you Plaintiff's Exhibit 12, and I call your attention to the two original transfers and ask you when were those documents comprising that exhibit drawn?

A. On May 25, 1944.

Q. When was the transfer of the liquor therein reflected made?

(Testimony of Nick W. Maroosis.)

A. On May—well, just a moment, now—the transfer was actually made on May 25, also. However, in the case of one, the state's Exhibit No. 13, the merchandise was on the duplicate.

Q. Just a minute, now. You are referring to 12?

A. No. 12; both were transferred on May 25, 1944.

Q. The documents were drawn on May 25?

A. Yes, sir.

Q. Now, with reference to Plaintiff's Exhibit No. 13 for identification, will you tell us when those documents were drawn?

A. Those documents were both drawn on—one was drawn on May 25, the other was drawn on May 23.

Q. And when were the liquors therein set forth transferred?

A. The liquors that were of which the copy was marked May 23, was transferred on May 23, and the copy marked May 24, that particular merchandise was part of the 100 cases that remained at 499, consequently a transfer sheet was made. The merchandise was already in the store.

Q. 499 what? [63]

A. 499 Haight Street.

Q. What merchandise are you referring to?

A. 30 cases of Three Rivers whiskey.

Q. On May 25 there were 30 cases of Three Rivers whiskey still remaining?

A. There was 60 cases, 30 of which were trans-



(Testimony of Nick W. Maroosis.)

ferred from 499 Haight to 458 Geary and 2066 Fillmore Street.

Q. Referring now to the second transfer sheet of Plaintiff's Exhibit No. 12, which refers to 22 cases of Three Rivers whiskey and 8 cases——

A. That is correct.

Q. That whiskey was in Haight Street and transferred from Haight Street to Fillmore Street?

A. That is correct.

Q. The other 30 cases transferred on May 23——

A. May 25.

Q. Now, Mr. Maroosis, I think——

I think the witness has testified these were in the regular course, we are reoffering them at this time.

Mr. Collett: Renew my objection, if the Court please, and add further it is self-serving, that the evidence might be admissible if they had shown the books of account, shown certain transfers to books to corroborate. The best evidence is the books of account showing wherein this was charged, the merchandise of the store, and in what manner the entries in the [64] book were kept to show the total acquisition from the time of the inventory of April 1 and the dispositions that were made, either by transfer or by sale by this particular inventory that they have previously sought to introduce in evidence.

The Court: An edifice cannot be built simultaneously, it must be brick by brick.

Mr. Collett: Yes, but if the Court please, the thing to do is to lay the foundation.



(Testimony of Nick W. Maroosis.)

The Court: The objection further goes to the weight or persuasiveness of the exhibit and not to its admissibility. Maybe other evidence will be more persuasive. The objection is overruled; exhibits 12 and 13 are admitted.

The Clerk: 12 and 13 admitted into evidence.

(Whereupon the exhibits previously for identification were received in evidence and marked Plaintiff's Exhibits 12 and 13, respectively.)

Q. (By Mr. Grupp): This book which I am holding, will you explain to the Court what that is; Plaintiff's Exhibit 14 for identification.

A. That is a book of accounts, 458 Geary Street, the store that was known as Joseph's Liquor Store.

Q. When you say the book of accounts, what does that book contain specifically?

A. That contains everything, contains the ledger, it has the accounts receivable, accounts payable; it is a complete [65] accounting book. It is a double-entry system, has a check system. It is supposed to be one of the most efficient records in the liquor business.

Q. That book also contains the journals?

A. Yes, sir.

Q. Handing you Plaintiff's Exhibit 14, Mr. Maroosis, I will ask you if that book was kept by you or someone under your direction for Joseph's Liquor Store at 458 Geary Street up to the time that that business was sold to Tom DiMaggio?

(Testimony of Nick W. Maroosis.)

A. Yes, sir.

The Court: I don't know what is going on. You gave him a double question and the alternative.

Mr. Grupp: Might I restate the question?

Q. Mr. Maroosis, are there any other books, permanent records, that were kept for 458 Geary Street other than that document which you now hold in your hand, Plaintiff's Exhibit 14 for identification?

A. No need, this is complete in itself.

The Court: That doesn't answer the question.

The Witness: No permanent records; this is the permanent record.

Mr. Collett: Let us have the answer to the question, any other records kept. He said no permanent record.

Mr. Grupp: I asked any other permanent records. We offer in evidence Plaintiff's Exhibit 14 for identification. [66]

The Court: No question as to who kept this? He was asked whether he kept it or someone else kept it, and he said yes.

Mr. Grupp: I asked, kept under his direction.

The Court: I don't know whether he kept it, or kept under his direction.

Q. (By Mr. Grupp): Mr. Maroosis, will you tell us how that book was kept, and by whom?

A. Well, in our operation we had a number of liquor stores and consequently we had two girls that were employed full time, one part time, but one

(Testimony of Nick W. Maroosis.)

was the accountant that was kept full time. She invariably kept the books.

Q. And what was her name?

A. Mrs. Woodward.

Q. Where is she now?

A. She is in the nut house.

Q. She isn't with you any longer?

A. No, she is not.

Q. Was she an accountant, did you say?

A. Yes, sir.

Q. And how long did she work for you?

A. Oh, for several years.

Q. How long?           A. Five years.

Q. And were these records examined periodically by outside [67] accountants other than your regularly employed accountants?           A. Yes, sir.

Q. And can you tell the Court who were these other accountants that examined these accounts?

A. Andrews and John Forbes.

The Court: It is now ten o'clock. I will interrupt this matter.

(Whereupon an adjournment was taken until 1:00 p.m., Friday, November 18, 1949.) [68]

Afternoon Session, Friday, November 18, 1949  
at 1:00 o'Clock

The Court: All right, gentlemen.

Mr. Grupp: Your Honor, I think counsel and I have arrived at an agreement which will expedite

the introduction of certain exhibits which we feel are necessary.

The Court: All right, I am glad of that.

Mr. Grupp: Counsel, I have explained I thought we had arrived at a more expeditious method of introducing the various exhibits, with the understanding the exhibits referred to will be introduced. We now offer in evidence Plaintiff's Exhibit 14, which is the ledger book.

Mr. Collett: No objection.

The Court: Admitted.

(Whereupon ledger book was marked Plaintiff's Exhibit No. 14 in evidence.)

Mr. Collett: This is on the understanding, if the Court please, that there are certain of these records that are missing and he is going to admit they are missing.

Mr. Grupp: That is not the ledger.

Mr. Collett: I know, but the ledger isn't part of the missing records—you told me you would stipulate that they were missing.

Mr. Grupp: We will stipulate and admit that certain records, and the question will arise as to whether or not they [69] are part of the permanent records of the books, but there are certain additional records that are at this time not available.

Mr. Collett: We will state what they are.

Mr. Grupp: May I go ahead with the statement? I will get to this. We now offer as plaintiff's exhibit next in order a black looseleaf book which

(Testimony of Nick W. Maroosis.)

purports to be a daily perpetual inventory, records covering the period of Joseph's, commencing with March 31, 1944, and covers it to the closing date of that store, May 25, 1944.

Mr. Collett: If your Honor please, this is subject to the Court's conclusion as to the materiality of it. They want to get it in. I have no doubt about its materiality, but I am not going to object to its going in.

The Court: Just what is it?

Mr. Grupp: Daily perpetual record from March 31, 1944 to the closing inventory date, May 25, 1944.

The Court: It is offered?

Mr. Grupp: It is offered in evidence.

The Court: It is admitted for what it is worth.

(Whereupon the daily perpetual inventory, March 31, 1944, to May 25, 1944, was admitted into evidence as Plaintiff's Exhibit No. 15.)

Mr. Grupp: Incidentally, might the record show that the black book is the record of items—daily perpetual record of items other than whiskeys? [70]

Mr. Collett: Correct.

Mr. Grupp: We now offer a group of looseleaf pages similar to those contained in Plaintiff's Exhibit 15, but in the whole this constitutes the daily perpetual inventory from March 21, 1944, to May 25, 1944, of the whiskey in the same location, that is, Joseph's, 458 Geary.

Mr. Collett: No objection, subject to the same reservation, if the Court please. It is the month of

(Testimony of Nick W. Maroosis.)

March and the period in question is prior to April 1, and the period from May 25 to April 1 is not an inventory of any particular significance so far as the period involved in the course of the transactions prior to April 1.

The Court: Exhibit 16 is admitted for what it is worth.

(Whereupon group of looseleaf pages, inventory from March 21, 1944, to May 25, 1944, was admitted into evidence as Plaintiff's Exhibit 16.)

Mr. Grupp: We now offer a group of sheets which is a recap of the daily sales of Joseph's, 458 Geary Street, from the date the store opened in October, 1941, to the date the store was sold, May 25, 1944.

Mr. Collett: If the Court please, again counsel states it is a recap from daily sales, and I make the observation that the best record is the record of daily sales that they made the recap from, that is, some other record from which it is made. I am not going to object to it, but for whatever it might be [71] worth.

The Court: Is Exhibit 17 offered?

Mr. Grupp: Yes.

The Court: Admitted for what it is worth.

(Whereupon recap of daily sales of Joseph's, October, 1941, to May 25, 1944, was admitted into evidence as Plaintiff's Exhibit 17.)



Mr. Grupp: The group of documents which I will next offer are—what are they, Mr. Maroosis?

Mr. Maroosis: April, May, June, July, August, September, October, November.

Mr. Grupp: The group of memorandum sheets which we are next offering, your Honor, as plaintiff's exhibit next in order is a record of daily sales——

The Court: Just a minute. Record of daily sales?

Mr. Grupp: Record of daily sales from the date the store was opened.

The Court: From what date?

Mr. Grupp: That would be October, 1941. I don't remember the exact date.

The Court: All right, that was what date?

Mr. Grupp: That was the date of the taking of the inventory on April 31, 1944.

The Court: April 31?

Mr. Grupp: I am sorry, March 31. That is 1944. And in [72] offering these, and with reference to the missing documents, at a conference which was held yesterday afternoon in Mr. Collett's office we have been advised by some of the government men that early in January of this year they were present in Mr. Maroosis' office and examined these documents which now are offered as Plaintiff's Exhibit 18; that there were at that time in existence certain of the documents which are now found missing. We have offered, and make this offer at this time, that if the government men will testify

that they examined such documents and took notes from them and had their recaps of them, we will not object to their being introduced in evidence.

The Court: In other words, Exhibit 18 for identification has missing portions?

Mr. Grupp: As I understand from Mr. Maroosis—I think the records will bear this out—with the exception of one on November all of the 1943 records are missing.

The Court: All of 1943 except October and November are missing?

Mr. Grupp: That is right.

The Court: Any other portion of this period missing from October, 1941, to March 31, 1944?

Mr. Grupp: None that we know of.

The Court: All of 1943 except October and November is missing?

Mr. Grupp: That is right, and he states some of the dates [73] that are missing, the government men said they saw the books in Mr. Maroosis' possession and that they took an audit of them, or examined them, made notes from them, and we have offered that we can—that we knew they were in existence then and they have evidently been misplaced. We have made a search for them. I don't know whether Mr. Collett will have any objection to my making this statement. We do know that these books have been moved from Joseph's to the Fillmore Street store; that thereafter the records were again moved, and Plaintiff's Exhibit 18 constitutes the records which are considered perpetual

records in view of the fact that they are really notations of a clerk and a basis which Mr. Maroosis states was for him to check on clerks to determine the sales principally of bottled goods and don't in the main contain any reference to sale of case goods lots.

The Court: Then you are offering such in evidence?

Mr. Grupp: We are offering such in evidence, your Honor.

Mr. Collett: No objection.

The Court: Exhibit 18 is admitted for what it is worth.

(Whereupon memorandum sheets, October, 1941, to March 31, 1944, were admitted into evidence as Plaintiff's Exhibit 18.)

Mr. Collett: I might state that counsel may examine any witnesses he has to explain the answers of those books.

Mr. Grupp: We now offer as plaintiff's exhibit next in order a looseleaf binder containing sheets and explain that these [74] sheets report the daily perpetual inventory—no, report the daily sales, starting with April 3, the first date this store was opened under Mr. Maroosis' own management.

The Court: What year?

Mr. Grupp: 1944, through May 24, 1944, at which time—that was the last time the store was operated by Mr. Maroosis. We offer that in evidence.

The Court: May it be admitted?

Mr. Collett: Subject to the same reservation.

The Court: Yes. Exhibit 19 may be admitted for what it is worth.

(Whereupon looseleaf binder of daily sales, April 3, 1944, to May 24, 1944, was admitted into evidence as Plaintiff's Exhibit 19.)

Mr. Grupp: Mr. Maroosis points out these tapes are part of Plaintiff's Exhibit 18, and without these this book wouldn't make much sense.

The Court: In other words Exhibit 18 is admitted with added machine tape?

Mr. Grupp: Yes, sir. If you want to check these it will save us a lot of work.

Mr. Collett: This is the first time we have seen anything about these tapes, if the Court please.

The Court: The tapes will only be binding if they are accurate. [75]

Mr. Collett: That is true.

Mr. Grupp: They have been checked against the additions in the books. Now, if Mr. Collett will permit me, I would like to make this explanation to the Court again in an effort to expedite. As I understand, Plaintiff's Exhibit 18 is a recap of the daily sales of this store taken from the register of the store.

The Court: Let's see. You say Exhibit 18 is a recap of the record of daily sales—is that what you call it?

Mr. Grupp: I think we are muddled on this exhibit.

The Court: Exhibit 17 was stated to me as a recap of sales.

Mr. Grupp: That is correct. It is 17, your Honor. 17 is a recap of the daily sales of this store from the beginning of the operation of Joseph's by Mr. Maroosis and Mr. Kosloff through May 24, 1944, and contains a record of all the daily sales, and from that Plaintiff's Exhibit 17 the daily perpetual inventory represented by Plaintiff's Exhibit 15 and Plaintiff's Exhibit 16.

The Court: They were based on Exhibit 17, is that what you are telling me, Exhibits 15 and 16?

Mr. Grupp: That is right. The Plaintiff's Exhibits 18 and 19 were kept in the manner as represented by these loose individual books and bound periodically as part of Plaintiff's Exhibit 18 as just ordinary loose composition books, like, [76] except they are a little longer and in some instances the covers are torn on those books, and they are bound into the black volumes which are a portion of Plaintiff's Exhibit 18. Those records are notations by the clerk of individual sales as he makes them, with the exception that in most instances case goods were not listed thereon.

Mr. Collett: Just a moment, I don't want to get confused. You state that this inventory—this only begins March 25, of 1944, then goes after April 1, this so-called running inventory?

Mr. Grupp: That is right.

Mr. Collett: That is only from May 25—March 25—

The Court: I have got it March 31 to May 25.

Mr. Grupp: That is right, March 31 to May 25, is represented by Plaintiff's Exhibits 15 and 16.

Mr. Collett: But then you have put all this Exhibit 17 and stated that it was based upon this inventory, whereas these go back from March 31 all the way to November 1, a period which is not covered, and you don't have any of those for that period.

Mr. Grupp: Let me restate it, if I may. Plaintiff's Exhibit 17 is a recap of daily sales and goes clear back to the opening operation of this store. It includes a recap of sales.

The Court: Counsel, as I understand it, the contents of [77] that Exhibit 15 and Exhibit 16 are based on that portion of Exhibit 17 as is found between March 31 and May 25 in the year 1944?

Mr. Grupp: That is correct.

Mr. Collett: The only thing I don't understand is that the periods are entirely different. One is from April 1 to May 25 and the other prior to April 1.

The Court: No, one is from October, 1941, to May 25, 1944. That is stated to me. The other is only a few months of that period.

Mr. Grupp: That is right. October 17, according to the statement, covers the whole period, and exhibits 15 and 16 cover a small portion of that full period.

Mr. Grupp: That is right.

The Court: And the portion they cover is the portion merely beginning April 1.



Mr. Collett: That is correct.

The Court: All right.

Mr. Grupp: Will you take the stand?

### NICK W. MAROOSIS

resumed the stand, previously sworn.

#### Direct Examination

(Continued)

By Mr. Grupp:

Q. Now, Mr. Maroosis, calling your attention to plaintiff's exhibit 18, I will ask you if those documents [78] or any of them form a part of your permanent bookkeeping records? A. No.

Q. Will you explain to the court just why they were kept?

A. The record was kept by the clerk. When the clerk made a sale of bottled whiskey he wrote down the sale and rang it into the cash register. At night the tape was taken from the cash register and the book checked from the tape of the cash register, and if the tape checked, the entry of the cash register plus any additional sales were put into a permanent record in the form of this exhibit.

Q. You are pointing to an exhibit? Is that this exhibit 17 you refer to? A. Yes, sir.

Q. Do the entries in plaintiff's exhibit 18 for any given day constitute the entire sales of the store on that given day?

A. In most cases it does.

Q. Does it include the case sales?

(Testimony of Nick W. Maroosis.)

A. In some cases it does not, and where there are case sales it wouldn't include large case sales.

Q. Incidentally, those records referring to plaintiff's exhibit 18, were they kept at your direction?

A. No.

Q. At whose direction were those kept?

A. That was the policy. [79]

The Court: Which exhibit wasn't kept at your direction? Exhibit 18?

Mr. Grupp: Exhibit 18, your Honor, yes.

A. It was the policy of the store, I mean the policy of doing business and checking merchandise.

Q. (By Mr. Grupp): Who was in charge of the store? A. Mr. Kosloff.

Q. He was in charge of that store from the opening date?

A. He was in charge of that store from the opening date of 1941 until April 1, 1944, at which time I took physical control of the store, on April 1, 1944.

The Court: He was in charge of the store from what date?

A. I believe it was October, 1941, until April 1, 1944, I believe.

The Court: How do you spell his name?

A. K-o-s-l-o-f-f.

Q. (By Mr. Grupp): Now, Mr. Maroosis, plaintiff's exhibits 15 and 16, were those kept under your direction? A. Yes, sir.

Q. Is that system a part of the same system you

(Testimony of Nick W. Maroosis.)

have always used in your store, now use in your other store?           A. Yes.

Q. That is known as what?

A. The daily perpetual inventory system or control.

Q. I am going to hand you plaintiff's exhibit 16, in evidence, and I am also going to hand you plaintiff's exhibit 19 in [80] evidence.           A. Yes, sir.

Q. Are either of these exhibits dependent upon the other?

The Court: 16 and 19?

Mr. Grupp: Yes.

A. Are they dependent upon each other?

Mr. Grupp: Yes.

A. Well, this is dependent on this.

Q. When you say "this," will you refer to the exhibit number?

A. Exhibit 16 is dependent upon the exhibit No. 19.

Q. All right, now will you explain to the Court just how that refers?

A. The sale is made here, for example—we will say that there are two bottles, fifths, of Three Rivers sold, and on during the day there are two more bottles sold, and later on there are two more bottles sold, and so forth.

Q. You are taking a given date?

A. Any day. Then at the end of the day these are totaled up, the Three Rivers would be totaled up by the girl in the office, and then she would turn to the book that has Three Rivers——

(Testimony of Nick W. Maroosis.)

Mr. Collett: Just a minute, so that we will understand this. Plaintiff's exhibit 16 has a page for every type of liquor or whiskey or any other liquor you have?

A. It has one sheet for everything in the store, including gum, candy, cigarettes, and everything.

Q. (By Mr. Grupp): Three Rivers Whiskey is on the sheet? A. Yes.

Q. You are referring to plaintiff's exhibit 19. When they find sales of Three Rivers on plaintiff's exhibit 19, they are entered here?

A. Entered and subtracted from the total inventory on exhibit 16. I can explain it better this way: If we have some merchandise—let's say in this particular instance Three Rivers, we had on hand on April 1, 1944, 3256 bottles, then on April 3 there were 46 bottles sold. If you will count the number of bottles sold on April 3 you will find a total number of 46. Then the girl subtracts 46 from 3256 and gets 3210, and on April 4 there were 13—

Q. (By Mr. Grupp): You can stop there. In other words, you can tell by looking at your perpetual inventory sheet the exact number of any given liquor at any given date?

A. That is correct.

Mr. Collett: If the Court please, I haven't objected, but I seriously question the materiality of all this as it is taking a good deal of time, and it is for this period of April 1. The records speak for themselves as to what he did.

(Testimony of Nick W. Maroosis.)

The Court: Of course I am anxious for you to get through, with proper concern for the interests of the respective clients. You can spend a lot of time that doesn't help either the client or me. [82]

Mr. Grupp: I think counsel will stipulate, your Honor, that the check which I now offer as plaintiff's exhibit next in order may be admitted.

The Court: Exhibit 20 is a check?

Mr. Grupp: For \$750, made payable to the State Board of Equalization, and is the check which paid the additional tax based on the state audit on 96.41 percentage of gross sales, being distilled spirits.

Mr. Collett: No objection.

The Court: Exhibit 20 is admitted.

(Whereupon check for \$750 was received in evidence and marked plaintiff's exhibit No. 20.)

Mr. Grupp: We now offer in evidence, and I don't think there will be any objection to this, as the next in order (that is, plaintiff's exhibit 21), which is a copy of the audit of the State Board of Equalization, and discloses the method in which they arrived at their calculation to the total amount of distilled spirits sold from July 1, 1943, to May 25, 1944, was 96.41 per cent of the gross sales of the store in question.

Mr. Collett: You are offering the document for evidence. The document speaks for itself. I object to counsel's statement as to what it might be. No objection to the document, it is to his statement as to what it might be.

(Testimony of Nick W. Maroosis.)

Mr. Grupp: I said it purported to be.

The Court: Exhibit 21 admitted. [83]

(Whereupon the audit of State Board of Equalization was received in evidence and marked Plaintiff's exhibit 21.)

Mr. Collett: If the Court please, I don't want to delay, but counsel has a whole bunch of correspondence here. I don't know why he is seeking to introduce all these documents. If there is any question about them, I want to save the time of the Court, but it is possible—offhand it doesn't seem to me they are particularly material.

The Court: Suppose we take a five-minute recess and you and counsel informally talk about them.

Mr. Collett: I would like to do that.

Mr. Grupp: I thought you had already seen these.

The Court: Court will be recessed for five minutes and you can talk about them as much as you please.

(Brief recess.)

The Court: Is this to be exhibit 22?

Mr. Grupp: I offer a letter of July 12, 1945, from Mr. Maroosis to the Alcohol Tax Unit, as plaintiff's exhibit 22, letter requesting appointment.

The Court: Any objection?

Mr. Collett: No objection.

The Court: Admitted.



(Testimony of Nick W. Maroosis.)

(Whereupon letter of 7/12/45, Maroosis to Alcohol Tax Unit, was received in evidence and marked plaintiff's exhibit No. 22.) [84]

Mr. Grupp: We next offer for identification, first, as plaintiff's exhibit 23, the reply of the Alcohol Tax Unit to Mr. Maroosis setting date for a conference.

(Whereupon letter of Alcohol Tax Unit to Mr. Maroosis was marked plaintiff's exhibit 23 for identification.)

The Court: Is there any objection?

Mr. Collett: No objection.

The Court: Admitted.

(Whereupon letter from Alcohol Tax Unit to Maroosis was received into evidence as plaintiff's exhibit 23.)

Mr. Grupp: We next offer in evidence as plaintiff's exhibit next in order, for identification, a letter from Mr. Maroosis to Mr. J. H. Maloney, who is district chief of the Alcohol Tax Unit, confirming.

The Court: No objection?

Mr. Collett: No objection.

Mr. Grupp: This letter confirms the appointment.

The Court: Exhibit 24 admitted.

(Whereupon letter from Maroosis to J. H. Maloney confirming appointment was admitted into evidence as plaintiff's exhibit 24.)

(Testimony of Nick W. Maroosis.)

Mr. Grupp: We next offer as plaintiff's exhibit next in order Mr. Maloney's reply confirming date of July 31, 1945, as the time for the appointment with Mr. Maroosis.

Mr. Collett: No objection. [85]

The Court: Exhibit 25 admitted.

(Whereupon letter from J. H. Maloney to Maroosis confirming date of appointment was admitted into evidence and marked plaintiff's exhibit 25.)

Mr. Grupp: We now offer in evidence a letter to the Alcohol Tax Unit with an inclosure therein, a copy of the audit of the State Board of Equalization, showing how the 96.41 figure was arrived at, dated November 9, 1945.

Mr. Collett: No objection.

The Court: Admitted.

(Whereupon letter of 11/9/45 to Alcohol Tax Unit was received in evidence and marked plaintiff's exhibit 26.)

The Court: This letter is from the State Board of Equalization?

Mr. Grupp: No, this letter is from Mr. Maroosis' accountant to the Alcohol Tax Unit inclosing for their examination the State Board of Equalization audit showing how the 96.41 percentage was arrived at. We next offer the letter from the Treasury Dept. to Mr. Maroosis dated February 15, 1949,

(Testimony of Nick W. Maroosis.)

rejecting his claim for refund which was made for this assessment now in question.

The Court: Exhibit 27 offered.

Mr. Collett: No objection.

The Court: Admitted.

(Whereupon letter of 2/15/49, Treasury Dept. to Maroosis, was admitted into evidence and marked plaintiff's exhibit 27.) [86]

Mr. Grupp: Incidentally, I note that on the back of plaintiff's exhibit 25 there are some penciled notations which I presume were not on the original, and I would like to question him.

Q. Mr. Maroosis, I hand you plaintiff's exhibit 25. I note some penciled notations on the back. Do you know whose handwriting that is?

A. It is my handwriting.

Q. Do you know when those notations were made?

A. The day following the appointment.

Q. The appointment referred to in that letter?

A. Yes, sir.

Q. When was that appointment, Mr. Maroosis?

A. I don't remember. Apparently August 7 at 3:00 o'clock.

Q. What year? A. 1945.

Q. Do those notations on the back recall to you who was present at that conference?

A. Yes, I was supposed to see a Mr. Colliton, but I have "Mr. Colliton not in." Apparently I

(Testimony of Nick W. Maroosis.)

saw Mr. Ed Ruark, and I have the notation that he was the senior inspector.

Q. You had a conference with him at that time?

A. Yes, sir.

Q. I will ask you this question, Mr. Maroosis: Were you at any time called into conference with the Alcohol Tax Unit [87] inspectors or examiners and physically you did not attend or refused to attend?

A. Never. I have never. They refused me several times to give me hearings, though.

Mr. Grupp: You may cross-examine. Oh, there is one other question:

Q. Mr. Maroosis, in plaintiff's exhibit 6, which has been identified as the Alcohol Tax Unit sales audit and basis of the sales assessment, which was subsequently changed, I note in that audit the following language, "Taxpayer's distilled spirits sales used his estimate of distilled spirits, being 86 per cent of total sales." A. Yes, sir.

Q. I will ask you if you ever gave that estimate to the inspectors.

A. Mr. Hedrick asked me——

Q. Just answer yes or no first. A. Yes.

Mr. Collett: Just a minute.

Mr. Grupp: I was reading from here, counsel (indicating). I read this language.

Q. Your answer was yes, was it, Mr. Maroosis?

A. Yes, sir.

Q. Well, do you know approximately when that was? A. No, I don't remember. [88]

(Testimony of Nick W. Maroosis.)

Q. Do you know to whom you made that estimate?      A. To Mr. Hedrick.

Q. It was before, however, this first assessment was levied against you, was it?      A. Yes, sir.

Q. Do you know who was present besides Mr. Hedrick and yourself at that time?

A. No, I don't.

Q. Where did that conversation take place?

A. I believe it was at California and Fillmore.

Q. Will you tell the Court what you said at that time?

A. Mr. Hedrick asked me what I thought the percentages would be of distilled spirits on 451 gallons, and I told him I didn't know, however, I thought it would be somewhere around 86 per cent, because that is what the State Board determined for audit prior to the time I told him.

Q. In other words, your 86 estimate was based on a prior audit by the State Board of Equalization?

A. Yes.

Q. Did you give that figure to Mr. Hedrick?

A. I did, yes, sir.

Q. Now, after you received the audit from the State Board of Equalization, which is attached to plaintiff's exhibit 9, which changed that figure from 86 to 96.41, did you communicate that information to Mr. Hedrick? [89]      A. Yes, sir.

Q. How did you so communicate that information?

A. Well, I believe that we had a meeting after that down at their office on Battery Street, 535 Bat-

(Testimony of Nick W. Maroosis.)

tery, or somewhere down there, and I so advised them, along with my accountant, that those were now the facts and they refused to acknowledge them at all.

Q. Who is F. T. Andrews Company?

A. They are a firm of accountants.

Q. I notice on November 9, 1945, F. T. Andrews Company wrote (plaintiff's exhibit 26) a letter to the Alcohol Tax Unit advising them:

“Gentlemen:

“Inclosed is a copy of letter addressed to Mr. Maroosis and Mr. Kosloff from the State Board of Equalization, together with copy of audit of retail package sales, distilled spirits——”

Was that letter sent after your conversation with Mr. Hedrick?           A. Yes.

Mr. Grupp: You may cross-examine.

#### Cross-Examination

By Mr. Collett:

Q. You stated—exhibit 1, please——

Mr. Grupp: Pardon me, counsel, I do want to make this statement. We are sort of negotiating on a certain stipulation, your Honor, with reference to certain figures here, and [90] I have refrained in my direct examination of Mr. Maroosis from going into the questions which are not subject of that stipulation. Might it be understood if that stipulation is not signed—we are now considering it—that I may question this witness further on this



(Testimony of Nick W. Maroosis.)

matter referred to in that stipulation if it isn't agreed upon?

Mr. Collett: Well, I think we had better conclude that matter. This stipulation was presented to me in this form, if the Court please, just before the Court was in session, and it is a penciled notation preparation, but there are a couple of matters——

The Court: You may look at it. In other words, the Court is at ease, which means you counsel may talk to each other and there will be no part of it in the record and the reporter will keep no notes of what is said.

(Discussion of counsel off the record.)

The Court: All right, we are back on the record.

Mr. Grupp: Your Honor, I would like to offer a stipulation between respective counsel for the parties in this action, entered into in writing, and I would like to read the stipulation into the record.

The Court: I don't know why if you have it. Why not just file it?

Mr. Grupp: I did want to file it.

The Court: It is filed as part of the trial. [91]

Mr. Grupp: Thank you.

The Court: Stipulation agreed to and admitted.

Mr. Grupp: I will ask counsel—and I will finish in one more moment—as I walked over to the counsel table a moment ago I found one of my exhibits which I intended to offer and didn't. I do want to offer for identification at this time this

(Testimony of Nick W. Maroosis.)

file—this was among your papers, Mr. Collett, but I know I left it there. I will have the witness identify it. It is being offered as exhibit 28.

(Whereupon document was marked plaintiff's exhibit 28 for identification.)

Q. (By Mr. Grupp): Mr. Maroosis, this file, which is plaintiff's exhibit 28 for identification, can you explain what that file purports to be?

A. Well, when the state made our audit and assessed us for an additional \$750 I instructed my accountant to start checking, and she took every bottle that was sold from the period in question and checked it and found the percentages that the State Board had arrived at to be reasonably correct.

Q. And the tax which was paid, the \$750 check, plaintiff's exhibit 20 in evidence, was that paid subsequent to that audit? A. Yes, sir.

Mr. Grupp: Now I think I have finished.

Mr. Collett: Aren't you going to offer it?

Mr. Grupp: I offer it. [92]

Mr. Collett: If I may examine the witness on voir dire?

The Court: You may.

Q. (By Mr. Collett): Mr. Maroosis, this check of Mrs. Woodward you say is a check on every bottle? A. That is correct.

Q. For what period?

A. For the period in question there.

Q. Well, from here can you tell what period is in question?

(Testimony of Nick W. Maroosis.)

A. I think the period that was in question was January—was July 1, 1944, until May 25 when the store closed.

The Court: July 1, 1944?

A. July 1, 1944, yes, sir, until May 25, 1945.

Mr. Grupp: I think the record shows it was 1943, your Honor.

A. 1943, excuse me, that is right. What's the matter with me?

Q. (By Mr. Collett): This is a bottle by bottle check from July 1, 1943, to May 25, 1944, you said, is that right? A. Yes, sir.

Q. Will you show me where there is a bottle by check for the month of December, 1943?

A. I have to get the rest of the records, the rest of the sheets. I mean, what they do—let me explain.

Q. Just look at all the exhibits, and if you will show me from where you get the bottle by bottle check in December, 1943.

A. It is very simple: Here it says whiskey first, 1, 44— [93] meaning 1/1/44 to 3/31/44, and if you will look at it, evidently on one day you will find of the three months' period—sold 13 bottles of Johnny Walker during 1944, total 56 bottles of Johnny Walker—

The Court: Just a minute, we are spending a lot of time.

A. It is very simple. It explains itself.

The Court: Just read that question, Mr. Reporter.

(Testimony of Nick W. Maroosis.)

(Question read by the reporter.)

A. Yes, sir. If counsel will please count the number of bottles of Johnny Walker.

Mr. Collett: If the Court please, this is January to March, 1944.

A. That is what this is.

Mr. Collett: I submit, if the Court please, the witness be instructed to answer the question.

The Court: I am told something is very simple. It is indicated to me now it is very simple if I want to count all the bottled goods—a tremendous effort. Offhand that doesn't appear simple to me.

Mr. Grupp: I think, for the period it covers, your Honor.

The Court: If that is a fact it is very simple, he should be able to show in that particular check sheet what applies to December of——

Mr. Grupp: I think the witness is mistaken in the dates, your Honor. [94]

The Court: ——of 1943, rather than to tell counsel if he will look at all the other files and check through and count bottles he will find what he did was right.

Mr. Grupp: Your Honor, I think the last exhibit offered——

Mr. Collett: If the Court please, the witness was asked a question and I would like to have the witness testify, not counsel.

The Court: Yes. If the witness can point out—I mean, the Court ultimately has to be helped. If

(Testimony of Nick W. Maroosis.)

the witness can point out in this exhibit for identification, No. 28, where it shows what bottles were sold in December, 1943, I would like to have him do it.

A. This is not 1943, it is from 1/44 on to 7/31/44. This is a subsequent period to determine the percentage of distilled spirits.

The Court: I was told a while ago it was from July 1, 1943. Now you tell me it doesn't include that.

A. No, it doesn't.

Q. What does it include?

A. It includes the period from January 1, 1944, until March 31, 1944, inclusive.

Mr. Collett: I object to its introduction in evidence on the ground it is irrelevant and immaterial, doesn't cover the period which the witness stated it would cover, and offers nothing to the Court by way of evidence. [95]

Mr. Grupp: Your Honor, I think possibly the mistake is mine. I did get a little confused as to the dates. I would like to make the offer again. I suggest counsel's objection at this time be sustained so that the record will be kept straight.

The Court: All right, objection sustained.

Direct Examination  
(Continued)

By Mr. Grupp:

Q. Mr. Maroosis, in checking the State Board audit, can you explain to the Court just what steps

(Testimony of Nick W. Maroosis.)

were taken by you or your accountants under your direction to check the State Board audit?

A. Yes, sir.

Q. Of July 1, 1943, to May 25, 1944.

A. Yes, sir.

Mr. Collett: If the Court please, I object to the question. He has already been asked and has answered that the Board—that the bottle by bottle check was made by his accountant at the time, Mrs. Woodward, and he testified it covered the period from July 1, 1943, to May 25, 1944, and there was a confirming audit made by the State of California covering the same period.

The Court: I recognize that. He also stated at the beginning and insisted for a while that it covered the period from July 1, 1943, to May, 1945; but he has corrected that, and the Court have to keep something out because the witness was too certain and mistakenly certain. Objection overruled. [96]

Q. (By Mr. Grupp): Let me ask you the question, what steps were taken?

A. I immediately asked Mrs. Woodward to check the audit and percentages, and she went through the same steps that the State Board of Equalization went through, meaning she checked the purchases as against the sales, and that is inclusive of beer, wine, tobacco, and other merchandise other than distilled spirits. Then for further and conclusive evidence and proof, she took the period from Janu-



(Testimony of Nick W. Maroosis.)

ary 1, 1944, until March 31, 1944, and took the entire breakdown, which includes every package of cigarettes and every bottle of beer and everything that was sold in the store for that entire period.

Q. When you say "entire period," so we won't have that misunderstanding again——

A. January 1, 1944, until March 31, 1944.

Mr. Collett: If the Court please, I don't want to be confused myself. We have language that is used here referring to "entire period." The entire period——

The Court: He has made that clear. It is the entire three-month period.

Mr. Collett: My point is that the entire period in question is the period July 1, 1943, to May 25, 1944.

The Court: I realize that. The entire period that she checked is only a portion of the entire period of the State's audit. I recognize that. It is a fraction. [97]

Q. (By Mr. Grupp): Mr. Maroosis, the audit, or this check which you explained, was done by Mrs. Woodward where every item in the store was sold—every item in the store sold was checked and a computation reached as to percentage of gross distilled spirits, was that represented by plaintiff's exhibit 28 for the three-month period?

A. Yes.

Q. As to the period from July 1, 1943, through May 25, 1944—that is up to the date it was sold,

(Testimony of Nick W. Maroosis.)

now—was there any other audit done than this, or any other check?

A. Yes, they checked the purchases against the sales.

Q. Checked all the purchases against the sales?

A. Yes, sir.

Q. And in doing that—I hand you plaintiff's exhibit 21. Will you identify that? What is plaintiff's exhibit 21?

A. This is the check for the period 6/30/43.

Mr. Collett: I object. That document is in evidence and speaks for itself.

The Court: It is the copy of the audit of the State Board of Equalization, is what is was offered as.

Mr. Grupp: That is right. That is the check that was made against it.

Mr. Collett: He hasn't testified to that.

Q. (By Mr. Grupp): If you remember——

Mr. Collett: The document speaks for itself. It is in [98] evidence.

Q. (By Mr. Grupp): Mr. Maroosis, at the time Mrs. Woodward checked for the entire period, did she check against the audit of the State Board of Equalization? A. Yes, sir.

Q. Is it exhibit 21? A. Yes, sir.

Q. This period, then, was a recheck of the period? A. Yes.

Mr. Grupp: We will reoffer plaintiff's exhibit 28 as plaintiff's exhibit next in order.

(Testimony of Nick W. Maroosis.)

Mr. Collett: May I have one question on voir dire?

The Court: All right.

Q. (By Mr. Collett): Mr. Maroosis, did Mrs. Woodward examine the same records that were made available to the State Board of Equalization?

A. Naturally.

Q. Were there any other records made available to the State Board of Equalization?

A. All the records were made available to the State Board of Equalization.

Q. All the records? And the records that were made available to the State Board of Equalization, did they include the daily sales sheets for December of 1943, July of 1943, August of 1943, and September of 1943? [99]

A. I imagine so.

Q. Did they or did they not?

A. I don't know. I said I imagine so.

Q. Why don't you know?

Mr. Grupp: We will submit that question is argumentative.

The Court: It is cross-examination. Overruled. You may answer.

A. I already answered it. I imagine so, as the records were there and they had them available. That is five years ago, or four years ago, your Honor. There is no reason why they shouldn't have been examined. There would be no reason why they wouldn't be. We have the most efficient record system in the United States of any liquor store.

(Testimony of Nick W. Maroosis.)

Q. (By Mr. Collett): Mr. Maroosis, did Mrs. Woodward, in the calculation of this check, have available to her the daily sales sheet for the month of December, 1943, months of September, August, July?

A. Right here are the ones she checked. They are right there (indicating).

Q. They are? The only records she checked are there, and the only ones the State Board of Equalization checked?

A. She checked them all. I said she checked the same sheets as the State Board, as of purchases against sales. She took a further check.

Mr. Collett: I don't believe my question is very difficult. The witness has shown a very meticulous and detailed knowledge of the process whereby he started to conduct his bookkeeping from April 1. He has indicated a detailed familiarity with the bottle by bottle sales from January 1 to March 31, 1944. Now when we come to that period in which he doesn't have the books, he knows whether books, whether those books were checked, and I believe——

A. Your Honor, those were not permanent records.

Mr. Grupp: Just a minute.

The Court: Just a minute, Mr. Plaintiff, you are not to make any statement except if you are asked a specific question.

A. Yes, sir.

(Testimony of Nick W. Maroosis.)

The Court: Your volunteered expression might be stricken out.

Mr. Grupp: Your Honor, I would point out to the Court that in the questions and in the manner of questioning counsel has engaged in suppositions and assumed something not in evidence.

The Court: The questions of counsel for the defendant were entirely proper.

Mr. Grupp: Might I point out that the audit which is in evidence here of the State Board of Equalization did not purport and does not purport to be an audit of item by item sales of this establishment. It is an audit of purchases, as [101] the witness testified, against sales and does not intend—we do not intend to convey to the Court that the State Board of Equalization in its audit conducted a minute, detailed study of every item sold.

The Court: Well, just a moment. I am interested in one thing. There was an expression, I think yesterday morning, that apparently conveyed a meaning, but it was very close to an expression. I will ask the witness now, where is Mrs. Woodward?

A. She has had a change of life, your Honor. The woman is not well.

The Court: Well, where is she?

A. I do not know. The last time I heard she was in a——

Mr. Grupp (Interposing): I can ascertain that.

The Court: Just a moment. Answer is, the last time you heard——

(Testimony of Nick W. Maroosis.)

A. Her husband told me that apparently they had to put her in an institution.

The Court: Exhibit 28 is offered. I am not too sure that it will be any help to me. It will be admitted for what it is worth. If exhibit 28 is only to be of help to me if I have to go through all the records, of course I will pay no attention to it. If I can go through all the records and arrive at exhibit 28, and only arrive at exhibit 28 by going through all the records, I will do it independently. Exhibit 28 is admitted for what it is worth, if anything. Objection overruled. [102]

(Whereupon document previously marked for identification was admitted into evidence as plaintiff's exhibit No. 28.)

The Court: Any further direct examination?

Mr. Grupp: No further direct examination.

The Court: All right, cross-examine.

### Cross-Examination

By Mr. Collett:

Q. Mr. Maroosis, daily sales sheet for January 1 to March 31 which you have referred to that Mrs. Woodward made, the bottle by bottle check, can you tell me the total sales as shown on the three months on that? A. Yes, sir, I believe I can.

Q. What is it, Mr. Maroosis? A. \$9440.61.

The Court: Total sales of what? Everything?

A. I don't know, your Honor.



(Testimony of Nick W. Maroosis.)

The Court: The total sales, \$9,000 what? What was that figure you gave me?

A. I am not sure, your Honor. No, I don't believe that is the total, no, that is not the total, your Honor. That is the total from February 25 on. I don't have the total for that. I can get it out of the other exhibit, I believe.

Q. (By Mr. Collett): Have you anything, any tape or any addition on the daily sales which you stated Mrs. Woodward ran a bottle to bottle check on, showing the total value—the total sum of your sales during the period January 1 to March 31?

A. Yes, sir; if you give me the balance of the exhibits, the one that was just introduced.

The Court: You mean exhibit 28?

A. The last exhibit. Thank you. The total in whiskey sales for that period was \$24,525.44. The total sales for gin in that period was \$1243.80. The total sales for brandy for that period was \$1572.50. The total sales of liqueurs for that period was \$1156.83. The total sales of rum for that period was \$5244.32. The total sales of wine for that period was \$1430.48. The total sales of beer for the three months was \$112.94. The total sales for miscellaneous, which includes all the other items in the store—cigarettes, and so forth, was \$284.62.

The Court: What was the total?

A. I don't know, your Honor.

The Court: What was the amount of the whiskey sales again?

(Testimony of Nick W. Maroosis.)

A. The total amount of the whiskey sales?

The Court: This is for three months.

A. \$24,525.44.

Mr. Collett: Can we pause a moment and add that, if your Honor please? \$36,570.93. Is there any question about that figure?

Mr. Schiller: I got \$36,510.93.

The Court: Well, we have had two different additions and [104] two different adders.

Mr. Collett: Will you read that figure again?

The Court: Well, just a moment. We are spending an awful lot of time and can spend an awful lot of time more if we are going to make an arithmetic problem out of this.

Mr. Collett: It is only a small difference in the figure. I possibly missed a few.

The Court: Let me see the book.

A. Yes, sir.

The Court: Whiskey sales, \$24,525.49; gin, \$1143.80; brandy, \$1572.50; liqueurs, \$1136.83; rum, \$5244.32; wine, \$1430.48; beer, \$112.94; miscellaneous, \$284.62. Those are the figures I have read from the typed sheets. How much more evidence do you expect to put in in your case in chief?

Mr. Grupp: I just have one accountant, your Honor, to substantiate the State Board of Equalization's figures, chiefly.

The Court: Counsel, may I speak off the record?

Mr. Grupp: Yes, sir.

Mr. Collett: Yes, sir.

The Court: You may put this down, but what

(Testimony of Nick W. Maroosis.)

I am going to suggest is that we have a very brief, informal mid-trial conference where nobody is bound. I am doing this intentionally so that you do not have to be technical and careful of what you say, but I am hoping I may arrive at what you counsel think the real issue is. You will not be bound by it, then when we go [105] back on record there will be no mention made of this except as counsel agree a synopsis should be made. Is that satisfactory?

Mr. Grupp: Yes, I think this will assist us materially.

The Court: Well, that is enough. Are you satisfied?

Mr. Collett: Yes.

The Court: We are off the record.

(Discussion off the record.)

The Court: On the record.

Mr. Grupp: I now at this time withdraw Mr. Maroosis and proceed to put on the accountant, without in any way limiting the defense of further cross-examination of Mr. Maroosis.

The Court: Mr. Maroosis may be temporarily withdrawn, and it will be understood he will be subject to cross-examination later.

(Witness excused.)

Mr. Grupp: I think if we had another short recess I could talk to the accountant and I could shorten his examination very materially.

The Court: All right. About time for an after-

noon recess, anyway. We will have one of ten minutes. We are at recess.

(Recess.)

The Court: All right, call your witness. [106]

JAY BRUCH

called as a witness on behalf of the plaintiff, sworn.

The Clerk: Will you state your name to the Court, please?      A. Jay Bruch.

Mr. Collett: Directing my attention to the Court's remarks off the record, I would like to go off the record.

The Court: All right, we may go off the record.

(Discussion off the record.)

The Court: Now we are back on the record.

The Witness: I understand I may refer to my working papers in connection with answering any questions that relate to figures?

The Court: I don't know yet what the questions will be.

Direct Examination

By Mr. Grupp:

Q. Mr. Bruch, what is your profession or occupation?

A. I am a certified public accountant and a partner of the firm of John F. Forbes & Company.

Q. Where did you take your degree in accounting, Mr. Bruch?

(Testimony of Jay Bruch.)

A. I received my degree in New York State in 1929, and by reciprocity have also received a C.P.A. certificate in the State of California.

Q. Were you admitted as a certified public accountant in the State of New York?

A. Yes, in 1929. [107]

Q. When were you admitted in the State of California?      A. In 1946, I believe.

Q. And John F. Forbes & Company, do they have offices in San Francisco?

A. Yes, they do.

Q. And elsewhere?

A. Yes. They also have offices in Seattle, Los Angeles, Chicago and New York City.

Mr. Collett: Satisfied with the witness' qualifications, if the Court please.

Mr. Grupp: Now, Mr. Bruch, when were you first employed by Mr. Maroosis?

A. In February of 1948.

Q. Was that employment directly in relation to the assessment in question in this action?

A. No, it was not. It was in connection with an income tax matter.

Q. Subsequently on from 1948 in connection with that income tax matter, did you subsequently do any work for Mr. Maroosis as a C.P.A. with reference to the assessment in question in this case?

A. Yes, I did.

Q. And in the course of that work did you

(Testimony of Jay Bruch.)

examine the records of Mr. Maroosis?

A. Yes, I did. [108]

Q. Can you explain to the Court, as briefly as you can, what type of bookkeeping system Mr. Maroosis has?

Mr. Collett: I object to the question, it is ambiguous as to what he means.

The Court: Overruled.

A. Mr. Maroosis keeps what is known as a double entry set of books and records, and in my opinion they are a complete set of books which are properly kept and——

Mr. Collett: Well, I object and request the latter part of the witness' answer be stricken.

The Court: Overruled. He is merely stating it as his opinion.

Q. (By Mr. Grupp): Mr. Bruch, in examining Mr. Maroosis' records can you, by the examination of your records, determine from the records, his permanent records, his purchases, his sales, his inventory as of a given period, and so forth, such information? A. Yes, I can.

Q. You can determine that?

A. I can determine that from an examination of his records.

Q. You are familiar with the government assessment in this matter, are you? A. Yes, I am.

Q. You examined it, did you?

A. Yes, I did. [109]



(Testimony of Jay Bruch.)

Q. Did you check that assessment?

A. Yes, we did have occasion to check the assessment in connection with the filing of a refund claim on behalf of Mr. Maroosis.

Q. I will hand you plaintiff's exhibit 9, which is entitled a claim, and consists of several sheets, possibly 15 or more. Is that the claim you refer to?

A. Yes, it is.

Q. Was that prepared by your office?

A. Yes, it was.

Q. In checking the government assessment in this instance, can you explain to the Court what you did to check that assessment?

A. We did several things. First of all we took the inventory figure, which was furnished to Mr. Maroosis as of May 2, 1944, expressed in terms of proof gallons, and followed the reconciliation of that inventory back to April 1, 1944, as—

Q. Might I interrupt?

A. —furnished to Mr. Maroosis by a representative of the Alcohol Tax Unit.

Q. Mr. Bruch, you mentioned a May 2 inventory? A. That is right.

Q. Do you know who took that inventory, the May 2 inventory?

A. According to the information furnished to us, it was taken by a representative of the Alcohol Tax Unit.

Q. That was checked back to April 1 in what manner? [110]

(Testimony of Jay Bruch.)

A. We followed the computations that were made by a representative of the Alcohol Tax Unit, and I believe that is in evidence here as an exhibit, and that showed an over-declaration of 108.97 proof gallons. Then we also questioned Mr. Maroosis as to why there would be an overstatement of that amount over such a short period, and he explained to us that the inventory as of May 2, 1944, which the representative of the A.T.U. had used, did not include 60 cases of Three Rivers whiskey which was stored at 499 Haight Street.

We then compared the number of proof gallons which would be represented by this 60 cases and found it to be 123.84 proof gallons; and if the calculations of the Alcohol Tax Unit was adjusted to that effect, to that additional quantity, it would have resulted in an understatement of 14.87 proof gallons rather than an overstatement of 108.97 proof gallons. After reducing this to 14.87 proof gallons, we were satisfied in our minds that the inventory as declared on April 1, 1944, was substantially correct.

Q. At this point, Mr. Bruch, in the stipulation which was filed before the Court today, a part of that stipulation provides that it was the consensus of opinion of the C.P.A.s of the State Board of Equalization and investigator of the Alcohol Tax Unit that a percentage calculation in which there is an apparent understatement or overstatement of approximately one per cent of the proof gallons purchased and sold during a given [111] inventory

(Testimony of Jay Bruch.)

is sufficient to confirm the physical inventory. That was your opinion as well as the opinion of the Alcohol Tax Unit investigators?      A. It was.

Q. So that when you refer to the percentage calculations, Mr. Bruch, just what do you refer to which might result in this one per cent error, which is nevertheless considered accurate?

A. It was referring specifically to the figures which appeared in that stipulation.

Q. I am referring to, just generally, what you consider is a percentage calculation.

A. A percentage calculation, if I understand you correctly, would be the amount by which your difference compared with the volume which is passed through the account, is computed to be approximately one per cent.

The Court: Counsel, if you have this covered by the stipulation, why cover it here?

Mr. Grupp: I tried merely to ascertain whether or not the May 2 inventory, when checked back, was also put on a percentage computation.

Q. (By Mr. Grupp): So far as purchases and sales from April 1 to May 2 is concerned, that was done by the same type of percentage calculation, was it not?

A. No, the percentages were not used in that second computation. That was based on actual inventory taken on May 2, 1944, the [112] purchases and the actual proof gallons——

Q. I see.

(Testimony of Jay Bruch.)

A. —and it wasn't necessary to resort to the use of percentages.

Q. I see. Now, in investigating the government figures were you able to determine what the Alcohol Tax Unit considered a reasonable gross profit or markup on the sale of distilled spirits?

A. Well, on the basis of the reports of the Alcohol Tax Unit, they would figure a  $33\frac{1}{3}$  markup or a 25 per cent gross profit on the basis of the selling price.

Q. Taking into consideration Mr. Maroosis' return to the government as of May 1, 1943—1944, based on the April 1 physical inventory taken by him—strike that, please.

Did you, Mr. Bruch, check the gross profit made by Mr. Maroosis during the year 1943?

A. I did.

Q. And did you come to a determination of what his gross profit was during that time?

A. Yes, I did. According to his books and records his gross profit for the current year 1943 figured 27.87 per cent.

Q. And did you also determine from your examination his gross profits for 1944?

A. I did for the period from January 1, 1944, to March 31, 1944. According to his books and records his gross profit figures [113] 25.89 per cent, and that profit is based upon the inventory on which he made his declaration as of April 1, 1944.

Q. Do I understand correctly that in determin-

(Testimony of Jay Bruch.)

ing that gross profit you took his dollar value of his inventory of April 1, 1944, as forming the basis of his return to the government, into consideration when you computed his gross profit of that year?

A. Yes, that is correct.

Q. Did you in checking the government assessment give effect to the increased value of the inventory based on the government assessment to determine what Mr. Maroosis' gross profit would be if he had the inventory claimed by the government in its assessment?

A. I did; and if the inventory were increased by the amount claimed in the assessment it would have resulted in a gross profit of 47.33 per cent on sales as compared to 25.89 per cent, according to his books, for the period from January 1, 1944, to March 31, 1944.

Q. Now, as an accountant, in determining the gross profit according to Mr. Maroosis' inventory as taken by him on April 1, and in determining what his gross profit would be if you relied upon the government assessed inventory as of April 1, 1944, what conclusion do you reach from the figures of 25.89 per cent as against 47.33 per cent?

A. It would be—— [114]

Mr. Collett: Well, if the Court please, I object to that. What conclusion about what? The question is ambiguous.

The Court: I think I will sustain the objection on the ground that his conclusion would not be ad-



(Testimony of Jay Bruch.)

missible. You are making that objection, are you?

Mr. Collett: I will object, incompetent, irrelevant and immaterial and calling for a conclusion of the witness.

The Court: That is the particular matter involved in the question.

Q. (By Mr. Grupp): Mr. Bruch, you included as part of the claim which you prepared for Mr. Maroosis, plaintiff's exhibit 9—you included in that claim when you filed it with the government a copy of the audit or determination of the State Board of Equalization showing the percentage of distilled liquor sales as against gross sales for the period July 1st, 1943, to May 25th, 1944, did you not? I say, that was included in there?

A. Yes, it was.

Q. Incidentally, did you cause to be checked—did you cause an audit of the State Board of Equalization audit to be made, or comparison, to determine the correctness of that audit in the determination reached by the State Board?

A. Yes, we did review the method by which the State Board of Equalization arrived at the 96.41 per cent percentage of distilled spirits sales, and the computations appeared in order and, in our opinion, were substantially correct. [115]

Mr. Collett: I object to that conclusion and move to strike the answer on the ground it wasn't responsive to the question. The question was, did he cause an audit to be made.



(Testimony of Jay Bruch.)

The Court: I think I will strike all the balance.

Mr. Grupp: All right.

Q. Did you reach a determination, Mr. Bruch, by a check of the figures of the State audit, to determine the correctness?

The Court: You may answer yes or no.

A. Yes.

Q. (By Mr. Grupp): And did you find—what was your determination?

A. Our determination——

Mr. Collett: I object to the question as being ambiguous.

The Court: Well——

Mr. Collett: I don't know where he is going with this.

The Court: Well, there is this, counsel: this question, of course, is a question that ultimately has to be determined by me and I would have the privilege of declining to hear it upon the ground that he is advising me what my conclusion should be. But I will overrule it. If I am going to allow the government men to give their opinion as to where something was going, it will be a double-bitted axe and will work both ways. Objection overruled.

Q. (By Mr. Grupp): Will you answer the question?

A. I arrived at the opinion that the State Board of Equalization computation would fairly represent the percentage of distilled [116] spirits sales for the period covered by their check.

(Testimony of Jay Bruch.)

Mr. Grupp: I will say this, my associate calls my attention to a summary of the audit of the State Board which may be of assistance to the Court and counsel. However, since it is only a summary of it, it may be objectionable, and if you have objections I will withdraw my offer. I thought it might be of assistance as prepared by the accountants of the State Board.

Mr. Collett: Are you offering this for identification?

Mr. Grupp: I want you to examine it. I have another to offer for identification. I am giving you that copy so that you may have it. We offer that as plaintiff's exhibit next in order, for identification.

(A document was marked plaintiff's exhibit 29 for identification.)

Q. (By Mr. Grupp): Mr. Bruch, I am handing you plaintiff's exhibit 29, for identification, and without telling us what the document contains, will you just explain what that document purports to represent, without reading anything from it?

A. It purports to represent a summarization of figures from the State Board, from the audit by the State Board of Equalization, and shows how the figure of 96.41 per cent was specifically computed.

Mr. Grupp: I will offer that in evidence as such a summary, and, as I say, if counsel has any objection I won't urge the offer. [117]

Mr. Collett: The audit is in, if the Court please, as the best evidence; it speaks for itself.

(Testimony of Jay Bruch.)

The Court: Counsel, in spite of the modesty of plaintiff's counsel, I will overrule the objection and exhibit 29 will be admitted as an offer to the Court of plaintiff's theory. In other words, it might be called a sort of crystallized argument, and you will be given the opportunity and privilege of doing the same thing if you want to. It isn't evidence of anything except that it is correct. If we stopped here I would allow counsel in argument to hand that to me and say it was part of his argument and I am allowing it for that purpose.

(Summary of figures of the State Board of Equalization was admitted into evidence as plaintiff's exhibit 29.)

Mr. Grupp: You may cross-examine.

#### Cross-Examination

By Mr. Collett:

Q. Mr. Bruch, you stated you were first employed by Mr. Maroosis in February, 1948?

A. That is correct.

Q. Prior to that time you didn't know the gentleman?

A. That is right.

Q. The books you checked, did they include the daily sales sheets for December, 1943, or January, February, March, April, May, June, July, August and September, 1943?

A. I did not have——

Q. The question requires a yes or no answer——

(Testimony of Jay Bruch.)

Mr. Collett: —and I will ask your Honor to so instruct the witness.

The Court: Read the question to the witness.

(Question read.)

A. They didn't.

Q. (By Mr. Collett): You have never seen those books?

A. Not to the best of my recollection.

Q. Well, you know whether you did or not.

A. It would be difficult to say definitely whether I had or had not seen them for the reason that they cover a long period of time. I did not have any particular occasion.

Mr. Collett: I will ask that be stricken as not responsive.

Mr. Grupp: I think it is responsive. The question calls for an explanation.

The Court: Let's see what the question was.

(Question read.)

The Court: He may say he doesn't think so. If that is his answer, it wouldn't require a long answer. Is that your answer, you don't think you did, that is enough?

A. I do not think I saw those books.

Mr. Collett: I suggest these be given the exhibit number A, B, C, D, F.

The Court: Yes, I will suggest the clerk, where there is a number of documents in one exhibit, you endorse on the exhibit A, B, C, and so forth, with

(Testimony of Jay Bruch.)

the number. What is the number of that? [119]

Mr. Collett: This is number 18.

The Court: Then it should be 18-A, B, C, so that if they are separated they will get back into the proper group. You don't need to do it now.

Mr. Collett: May we designate this one, then as A?

The Court: Since it is inside you might name it 18-B. I am not going to charge the clerk with the obligation of being chronologically correct in the lettering of a certain exhibit. All he is to do is to show what group the complex exhibit is composed of.

Mr. Grupp: They are not composed as to date?

The Court: No, he is not charged with that. I am not telling him not to. All right, you may proceed.

Q. (By Mr. Collett): Mr. Bruch, I show you plaintiff's exhibit 18-B, which states on the front "Daily perpetual inventory, 4588 Geary, 1st quarter, 1944, January, February, March," and I will ask you if you have seen a similar book or document as to the month of December, 1943?

A. I have not.

Q. Would your answer be the same for the months of January, February, March, April, May, June, July, August and September, 1943?

A. I could not answer that definitely yes or no because at the time I was shown a bunch of books of the same nature, and I did not have occasion to

(Testimony of Jay Bruch.)

go through them to determine which months [120] were there and which months were missing, so I could not say for a certainty whether I had seen those other months or had not seen them.

Q. In your various computations with regard to the matter of the assessment which is involved in this case, you relied upon the plaintiff's books and the information therein contained exclusively, is that so?

A. No, that is not so, because——

Q. What was it?

A. No, that is not so.

Q. What else did you rely upon?

A. We relied upon the inventory which was taken by the Alcohol Tax Unit on May 2nd, 1944. We also relied upon the percentage of distilled spirits sales which were shown by the State Board of Equalization audit, which was attached to the refund claim.

Q. What is that figure?                      A. 96.41 per cent.

Q. You relied upon it? You mean in making your audit or your inspection of the books you relied upon the figure before you inspected the books?

A. No, that is not what I said. As I understood your question, you asked me whether in the preparation of the refund claim we resorted to anything other than the books and records and it was in connection with the preparation of the claim that we resorted [121] to the use of the Board of Equalization audit which revealed the 96.41 per cent as being distilled spirits sales.



(Testimony of Jay Bruch.)

Q. Mr. Bruch, the figure of \$5,912.24 which is on plaintiff's exhibit 29 and is taken from the State audit—what is the number of that? It is eleven, isn't it?—Well, it doesn't make any difference. It is shown as \$5,912.24. How was that figure determined? Where did they get that figure?

A. I do not know where they secured that figure.

Q. Did you confirm the figure?

A. I did not confirm that figure.

Q. You don't know where they got the figure?

A. I do not know where they got the particular figure.

Q. Well, what did you check when your attention was called to the State Board of Equalization audit?

A. I reviewed the method which they followed in arriving at the 96.41 per cent.

Q. In other words, you merely reviewed the manner in which they computed, rather than the method by which they obtained the figure, is that it?

A. I think that is a choice between words. As I interpret those two words you used, I consider them the same. You refer to manner and method. I think that they are somewhat synonomous, so far as I am concerned.

The Court: Let me hear the question.

(Question read.) [122]

The Court: All right, he has answered the ques-

(Testimony of Jay Bruch.)

tion that he thinks both "manner" and "method" are synonymous.

Q. (By Mr. Collett): You did not examine the accuracy of the figures that were given upon which the computation was based?

A. No, I did not.

Q. You did not. Mr. Bruch, you stated that as a result of the inventory that was taken by the government on May 2nd, and the relating that to April 1st, resulted in the apparent over-declaration by the taxpayer, plaintiff in this case, of 108.97 proof gallons; and that the taxpayer thereafter explained to you that there were sixty cases stored at 499 Haight Street. Where did that conversation occur?

A. Where?

Q. Yes. A. In the office of Mr. Maroosis.

Q. When?

A. Oh, it would be sometime about the middle part of 1948, prior to the preparation of our claim for refund.

Q. How did he happen to tell you about the sixty cases? How did that matter arise?

A. It arose because I asked him why there would be a difference of 108.97 proof gallons for the short period between April 1st, 1944, and May 25th, 1944.

Q. Did he say anything further about these sixty cases?

A. No, other than the sixty cases was the amount that remained of the [123] 100 cases which he had on hand at Haight Street on April 1st, 1944.

(Testimony of Jay Bruch.)

Q. He told you that on April 1st there were 100 cases at 499 Haight Street, and that on May 2nd, the day the government took inventory, that there were sixty cases remaining at 499 Haight Street, is that right? A. That is right.

Q. Did he say anything further with regard to those sixty cases?

A. No, he did not, to my recollection.

Q. And you were satisfied the difference between the 108.97 and 103.4 was immaterial, is that right?

A. That is right.

Q. Did he state why they were at 499 Haight Street?

A. No, I don't remember that he did state why they were at that location.

Q. Do you know what happened to those cases after May 2nd?

A. No, I do not know what happened to the cases.

Q. Did he say anything to you about why they were not included in the government's inventory?

A. Yes, he said they were not included because they were not at the Geary Street store where the inventory had been taken.

Mr. Collett: No further questions.

Mr. Grupp: You may step down. Oh, pardon me a minute.

(Testimony of Jay Bruch.)

Redirect Examination

By Mr. Grupp:

Q. Mr. Bruch, you were asked relative to plaintiff's exhibit 18-B. I am calling your attention to all of the plaintiff's exhibit 18, which consists of other books similar to plaintiff's exhibit 18-B, and ask you—loose-leaf books—and I will ask you whether you know what these records are?

A. After listening to the testimony I do.

Q. I will ask you whether these books are part of the permanent bookkeeping records of this establishment or any establishment like it?

A. I would not consider them to be.

Q. What are, in your opinion, the permanent records of an establishment such as operated by Mr. Maroosis?

A. The original books of entry and ledger are customarily considered the permanent books of an establishment.

Q. Handing you plaintiff's exhibit 14, is that one of the books which you would consider the permanent books?           A. Yes, it is.

Q. Now, are there any other books in these various exhibits that you have seen offered here which are considered or deemed to be permanent bookkeeping records of an establishment such as Mr. Maroosis operated, any such as plaintiff's exhibit 17—if you want to just glance at these—or plaintiff's exhibit 19, or plaintiff's exhibit 18?

(Testimony of Jay Bruch.)

The Court: Just a minute. 18? [125]

Mr. Grupp: No, that is 15. I misread that.

Q. Plaintiff's exhibit 16. Are any of these deemed to be the permanent bookkeeping record of an establishment such as Mr. Maroosis operates?

A. No, they are not.

Q. In your experience as an accountant, Mr. Bruch, such records as are not permanent bookkeeping records, referring specifically to plaintiff's exhibit 18, are those books not permanent books of record generally kept five, six, seven, eight, nine years by an establishment?

A. No, they are not generally.

Q. Mr. Bruch, do the permanent records, bookkeeping records of Mr. Maroosis's bookkeeping system, contain all the information that, in turn, could be found in any of these other exhibits in the ultimate result?

Mr. Collett: Oh, I am going to object to that question as being involved, complex, irrelevant, immaterial.

The Court: Unless he first says he has carefully examined all these other exhibits——

Mr. Grupp: Might I ask that question?

Q. Have you examined all the other exhibits?

The Court: Name them.

Mr. Grupp: Yes. Let's ask in each instance, then.

Q. Have you examined plaintiff's exhibit 18?

A. Yes, I have. [126]

(Testimony of Jay Bruch.)

Q. Do you know what that plaintiff's exhibit 18 represents? Do you know what those various books comprising plaintiff's exhibit 18 are?

The Court: I am not going to require you to go through all the case again. I am only asking him—you are asking what you find in one exhibit he can find in another. I want to know if he knows what is in it.

Q. (By Mr. Grupp): Now, Mr. Bruch, I will ask you if you have examined plaintiff's exhibit 17?

A. I have.

Q. And have you examined plaintiff's exhibit 15? A. I have.

Q. And plaintiff's exhibit 16? A. I have.

Q. I will ask you if the information contained in the exhibits I have just questioned you about—I will repeat them again—the information in plaintiff's exhibits 17, 15, 16, 19 and 18, are contained in the permanent books of records of Mr. Maroosis' establishment, plaintiff's exhibit 14?

A. I cannot fully answer that question without making an audit to definitely determine whether all of that information is included in the book.

Mr. Grupp: All right. I see. I have no further questions.

#### Recross-Examination

By Mr. Collett:

Q. Mr. Bruch, can you go through that bunch and show the Court how the figure of \$5,912.24 was determined as of July 1st, 1943?



(Testimony of Jay Bruch.)

A. I can attempt to. As I testified previously, I did not check up the figure, but I can endeavor to do so. I cannot answer whether I can check it without having done it previously.

Q. Do it.

A. From this here record it isn't possible to check the distilled spirits inventory for the reason that the inventory figures shown on the books includes all merchandise, inclusive of distilled spirits. It would be necessary to actually figure the inventory, detailed inventory as of July 1st, 1943.

Q. Can you tell us how the State Board of Equalization got the figure of \$5,912.24?

A. It was taken undoubtedly from the detailed inventory as of July 1st, 1943.

Q. Well, the State Board of Equalization audit was for the period from July 1st, 1943, to May 25th, 1944, and was made after May 25th, 1944, wasn't it?

A. Yes, it was.

Q. Well, where is the inventory from which the figure \$5,912.24 was determined?

A. Could I have that question repeated?

The Court: Yes, you may read it.

(Question read.)

A. I do not know. [128]

Q. (By Mr. Collett): You never saw such inventory? A. I did not.

Q. Is there any record in the book that there was such an inventory taken?

(Testimony of Jay Bruch.)

A. There is an indication that an inventory was taken on that date according to the book record.

Q. What is that indication?

A. The indication is from the fact that as of June 30th the general entry was made affecting the merchandise inventory account, adjusting the inventory account to the inventory as of June 30th, or July 1st, 1943.

Q. What is the figure?

A. The adjustment as of June 30th was a credit to the account of \$1,201.19, which——

Q. Credit to which account?

A. To the merchandise inventory account.——which resulted in adjusting the merchandise inventory account as of June 30th to \$8,890.99 as being the total merchandise inventory at that date.

Q. There is no figure there that shows the difference between the \$5,912.24—how that was determined actually, is there?

A. There is nothing in this record as I can find it.

Q. Now, the daily sales sheet for the period from January 1st, 1944, to May 31st, 1944, shows a total of \$35,450.93?

The Court: Is that a statement by you or a question, or does it appear from any exhibit? [129]

Mr. Collett: The figure that was quoted to the Court this morning by Mr. Maroosis from the exhibit 18-B, that the Court read, \$35,450.93, was shown to be from the daily sales sheet from the

(Testimony of Jay Bruch.)

period January 1st, 1944, to March 31st, 1944. I call your attention, referring to plaintiff's exhibit 9 and the portion of said exhibit which determined the total additional fee of \$750 due to the State of California, it shows the quarter ending 3/31/44, that Mr. Maroosis reported distilled spirits sales of \$60,566.48.

The Court: That is for what period?

Mr. Collett: January 1st, 1944, to March 31st, 1944.

The Court: To whom did he report that?

Mr. Collett: To the State Board of Equalization. And that as the result of the audit by the State Board of Equalization they determined the figure to be \$90,722.53.

The Court: Is this of sales?

Mr. Collett: Distilled spirits sales audited.

The Court: 90,000——

Mr. Collett: \$90,722.53.

Q. Mr. Bruch, can you explain the differences between those three figures? A. Yes, I can.

Q. Will you explain them?

A. The figures reported by Mr. Maroosis were based on an estimate of his total gross sales as being distilled spirits [130] sales, whereas the figure as audited reported the actual determination by the State Board of Equalization of his actual distilled spirits sales during that period.

Q. And the third figure?

A. I believe, as I recall the question, you only mentioned two figures.

(Testimony of Jay Bruch.)

Mr. Collett: Can you go back Mr. Reporter——

The Court: Well, just a moment. He mentioned another figure of \$35,450.93 as the sales from January 1st, 1944, to March 31st, 1944, inclusive.

A. I didn't quite recall that. The difference between the last figure mentioned of \$31,000——

Q. (By Mr. Collett): \$35,450.93.

A. ——and the figure actually determined by the State Board of Equalization as being his distilled spirits sales is the difference between incomplete figures represented in the first instance.

Q. Which is the first instance?

A. The \$35,000 figure.

Q. Incomplete in what respect?

A. In respect that that is not representing the total sales for that period.

Q. How do you know?

A. Because his books definitely show that his sales for that period were, as I recall some \$86,000.

Q. Do his books show what sales were effected to accomplish the difference between \$35,450, and, you say, \$86,000?

A. Yes, as I recall, I think it is set forth in that exhibit. If I could refresh my recollection I should find the actual figure that appears for refund claim.

Q. Could you show from the books just what was sold to accomplish the difference between \$35,450.93 and \$86,000, as you say?

A. There is nothing in the books which would show the difference. The books show what the

(Testimony of Jay Bruch.)

actual sales were. It isn't customary if I could explain it, it isn't customary for the books to show the difference between——

Q. No, Mr. Bruch, the books show a figure, isn't that right, a figure of \$86,000 and some odd cents. Can you give us the exact figure? You have the book, I think, before you.

A. The books would show more than that figure. If I might, I would prefer to refer to the exhibit which you have, which shows the sales for the quarter. I would have to add up the various figures.

Q. This is the State of California audit, isn't it? Can't you take the book and show me the figure I am referring to?

A. I am referring to the figure as it affected the refund claim we had prepared. I am familiar with what is contained in that.

Q. Aren't you familiar with the books?

The Court: Just a minute. I am interested in this: can [132] you show where the sales, what the sales were for the month of January, 1944; what the sales were for the month of February, 1944; and what the sales were for the month of March, 1944?

A. Yes, I can from that book.

The Court: Tell me where you get it.

A. All right.

The Court: What exhibit are you looking at? What exhibit are you using?

A. The figures I would give are taken from exhibit 14.

(Testimony of Jay Bruch.)

The Court: Tell us the page.

A. It is under the section which has a table marked "Expense" and the sheet is unnumbered. It is the fourth from the last sheet of this section, the following section being designated "Compensation Record." The headings appearing on the sheet are as follows from left to right, if you want to identify it.

The Court: Well, that is enough. Give me the amount for those three months.

A. The amounts for those three months: January, 1944, \$43,494.30;—

The Court: That is sales?

A. Sales. Sales for the month of February, 1944, \$25,029.82; and March, 1944, \$23,243.28. I might mention that last figure was arrived at by adding two figures together.

The Court: All right. Well, if those three figures are added you do not get \$86,000.

A. I have added the figures from this ledger that add to the [133] total of \$91,767.40, but I can explain what the difference is, your Honor, if I may.

The Court: You may.

A. The difference between the \$91,767.40 and the figure which I mentioned I believe is entirely represented by sales tax which was excluded in the figure that I quoted. The figure appearing on this ledger which I called off and which appeared in exhibit 14 includes sales tax.



(Testimony of Jay Bruch.)

The Court: You may proceed.

Q. (By Mr. Collett): Again I will ask you if there is anything that you can discover in that book that will disclose what was sold to make up the difference between \$35,450.93 and the \$91,767.40 that you just gave the Court for the first three months of 1944, January, February and March?

A. I believe I answered the question before, but I will repeat it. I can tell nothing in the books which will disclose that difference.

Q. Nothing? And you do not yourself know what that difference consisted of, is that right?

A. I do not know. I have an opinion of what it does,—

Q. Now, do you know what the total sales for the month of December were?

A. What year?

Q. 1943, excuse me.

A. According to this, Mr. Maroosis' books, the sales for the [134] month of December—

The Court: This is again exhibit 14, is that right?

A. That is right.

The Court: Proceed.

A. His sales were \$62,946.84, as shown by exhibit 14.

Q. (By Mr. Collett): Now, is there anything in the books to show what was sold that resulted in the figure \$62,946.84 which you just gave?

A. No, there is nothing in the book.

(Testimony of Jay Bruch.)

Q. Now, Mr. Bruch——

A. In exhibit 14, to be specific.

Q. Well, from any of the books and records which you have here?

A. There would be for the details of the \$62,-946.84 to the extent that it would be broken down by daily sales which comprise that monthly total.

Q. Daily sales were the basis of determining what was the figure, is that what you mean?

A. That is right.

Q. If you have no record of what you sold daily, there is nothing to tell what was sold?

A. That is correct.

Q. I call your attention to plaintiff's exhibit 21, the second page thereof at the bottom. It shows "Gross Sales 1943," then it is broken into three columns. The figures given there for [135] the months of July, August, September, October, November and December for gross sales, are they reflected in the books?      A. Yes, they are.

The Court: What month?

A. July, 1943, to and inclusive of the month of December, 1943.

Q. (By Mr. Collett): Can you give us from the books the similar figure for the period November, 1942, to June 30th, 1943?

The Court: This is from exhibit 14?

A. I do not know whether I am able to give any figures prior to the month of January, 1943, for the reason that this sheet which I am looking at, one

(Testimony of Jay Bruch.)

of the sheets I am looking at, only goes that far back. I will give the figure from that date forward, then in this to search to see if I can't find the total sheet, the prior period. The month of January, 1943——

The Court: These are gross sales?

A. Gross sales including sales tax, \$5,608.53; the month of February, 1943, \$6,990.19; the month of March, 1943, \$7,595.88; April, 1943, \$8,573.26. That last figure is a net of two amounts. May, 1943, \$8,141.70; June, 1943, \$9,643.77.

The Court: It is after four o'clock. How much more do you have to question this witness?

Mr. Collett: Not very much.

The Court: How much is "not very much"?

Mr. Collett: Well, I think I am just about through.

Q. Mr. Bruch, I think I have a little complication here—— [136]

Mr. Grupp: I think he has some other figures you asked for. I know they are in the book, but I think the witness is having some difficulty finding them.

Mr. Collett: That is right.

A. The other sheets are in a different section and I was looking for it, and I now have found it, and can furnish you those other figures. What was the starting date?

Q. (By Mr. Collett): November 1st, 1942.

A. Sales for the month of November, 1942, as

(Testimony of Jay Bruch.)

shown on a sheet marked "R-5" under this section "Sales" in exhibit 14, the November, 1942, sales were \$6,340.42; and the sales for the month of December, 1942, were \$6,990.04.

Q. I didn't get the November one.

A. \$6,340.42.

Q. Between your total of \$91,767.40 as opposed to the figure of \$86,000 which you said was less the sales tax, as total sales of the first three months of 1944, is the figure of \$90,722.53; would that include sales tax or was sales tax deducted from that?

A. I would have to look at the figures.

Q. I am showing you now again plaintiff's exhibit 9 for the retail distilled spirits sales audit report—column "Distilled spirits sales audited."

A. It appears that those figures included sales tax.

Q. Well, does the figure 96.41 relate to a figure which includes sales tax? [137]

A. Yes, it does.

Q. Is that a figure which was concerned only with distilled spirits?

A. You refer to two figures, namely a total sales and you now are asking about one figure, I am not clear——

Q. 97——

A. That is concerned with \$90,722.57, is concerned with distilled spirits.

Q. What would the total sales have been?

A. For what period?

(Testimony of Jay Bruch.)

Q. On that figure, what would the total gross sales have been on that figure?

A. For the same period?

Q. You have \$90,722.53 representing the sales of distilled spirits for the period which is indicated. What would the total gross sales have been for the same period? Do you have that figure?

A. Yes, as previously testified, the total sales for the same period were \$91,767.40.

The Court: Just a moment. I think that what was asked was if the state auditor's figure was \$90,700 on distilled spirits, what was the state auditor's total sales for that period, one hundred per cent. That was 96. per cent. Now, what was one hundred per cent.

A. The one hundred per cent, would be what I said, \$91,767.40. [138]

The Court: Of course, my mathematics—if \$90,700 was only 96 per cent—I would think it would be nearer 98 or 99 per cent.

A. It would be on the basis of those figures, your Honor.

Mr. Collett: It would actually be 94——

Mr. Grupp: I think the error occurred——

Mr. Collett: We might let the witness testify.

The Court: Let the witness testify.

A. I am unable to find any discrepancy in my previous statement, namely, that the total gross sales for the three month period ending March 31st, 1944, were \$91,767.40.

(Testimony of Jay Bruch.)

Q. (By Mr. Collett): Deducting sales tax?

A. That includes sales tax. And that for the quarter ending March 31st, according to the State Board of Equalization figure, their audited amount showed \$90,722.53 as distilled spirits sales, which would mean that the percentage of distilled spirits sales during that quarter were approximately 99 per cent.

Now, the explanation for the discrepancy between the approximate 99 per cent and 96.41 per cent is the fact that the 96.41 per cent covers the period from July 1st, 1943, to May 25th, 1944, the average for that period, whereas, we are comparing that average for that longer period with the percentage of distilled spirits sales for just one quarter, namely, the quarter ending March 31st, 1944.

Q. Doesn't the average apply equally all the way through on [139] the figure?

A. Oh, definitely not.

Q. You say \$90,722.53 includes sales tax?

A. I didn't catch that.

Q. You say \$90,722.53 includes sales tax?

A. It appears that it does.

Q. Where does it appear that it does?

The Court: Well, counsel, the late hour doesn't seem to be getting any shorter. I think we ought to adjourn until tomorrow, Saturday morning. Counsel, I might say this: without controlling or discounting what the attorneys may do, it has been my experience over the years that an individual—



(Testimony of Jay Bruch.)

if a party on one side wishes to establish something by cross-examination they may do it in a day when they can establish exactly the same thing by their own witness in fifteen minutes. Now, counsel can take that to heart. I am not directing or controlling cross-examination, but I sometimes have been in a position where counsel has spent days to get something confusedly when they actually had the witness who could put it in in fifteen minutes.

We will adjourn until tomorrow morning. What time? We have put in approximately a day this afternoon, that is, a judicial day of four hours. When could we meet tomorrow?

Mr. Grupp: At the Court's convenience. As far as I am concerned, I will have just one explanation to offer with reference to one of the exhibits, and I will be through. [140]

The Court: Exhibit 28?

Mr. Grupp: The exhibit that comprises the \$35,000 figure.

The witness: Your Honor, do you wish me to answer the question before we adjourn?

The Court: I don't wish any more answers. Now, counsel, I wish this case finished tomorrow. I have the idea that you can spend two weeks on this case. I have the opinion you can spend a portion of tomorrow more profitably than you can two weeks. If there are some salient, convincing points about these books, it will be far more impressive to the Court if those are put in speedily than if those

(Testimony of Jay Bruch.)

salient points are buried amongst a great mass of questions that somebody wants asked. I am not an accountant. Necessarily, over the years I have had to have a good deal of experience with the work of accountants, and as an attorney I necessarily had to have a system of picking out those things which I deemed important, hoping that they would be understood by the jury or the judge who was sitting. Now, endeavor to get the things that you want. Endeavor to eliminate the rest.

If you had me as a certified public accountant I might be able to digest a lot more than I can in my present capacity. Now, gentlemen, I want this case finished tomorrow. If the government is right, you can convince me without a great deal of time. If the plaintiff is right, you can convince me without a great deal of time. If it is going to take the government two [141] weeks to convince me about these books the government probably never is going to convince me. Similarly with the plaintiff. If we would meet at nine and run until 12, I think you can complete this. I can see on cross-examination you can spend all of tomorrow or all of next week, but if you have a few questions that are put, they ought to show the trend of what the next questions would produce. I wonder if we can't meet at 9 o'clock with the idea of quitting at 12?

Mr. Grupp: It is agreeable with us, your Honor.

The Court: This trial is adjourned until tomorrow morning at 9 o'clock. The Court expects to have the case submitted by 12 o'clock.

(Thereupon this cause was adjourned to Saturday, November 19, 1949, at the hour of 9 o'clock a.m.) [142]

November 19, 1949, at 9:00 o'clock

J. BRUCH

resumed the stand, previously sworn.

The Court: All right, gentlemen, the witness is on the stand. You may resume.

The Witness: Your Honor, shall I answer the last question?

The Court: The last question is unanswered. The last question is stricken. You may repeat whatever question you wish.

Mr. Collett: I have no further questions; I am through.

Redirect Examination

By Mr. Grupp:

Q. Mr. Bruch, in the cross-examination yesterday afternoon, you were given three figures; one was a figure of some \$30,000 odd dollars—three figures were \$35,000, one was \$60,000 odd, and one was \$90,000 odd. The \$35,000 figure was taken from plaintiff's exhibit 28, and in your answer you mentioned something about that being incomplete. Can you tell us why the figure of \$35,000 was an incomplete figure?

Mr. Collett: If the Court please, I am going to

(Testimony of Jay Bruch.)

object; calling for hearsay testimony. The witness testified only on information from those books and any information further than that is particularly hearsay, what someone else may have told [143] him.

Mr. Grupp: We are directing our questions to the books, your Honor, specifically.

The Court: That may be true, but you asked him about those, and they are entitled to an answer. Overruled.

A. I stated they were incomplete because I—in a previous observation there was a summary which did add up to much more than \$35,000 figure.

Q. (By Mr. Grupp): Looking at plaintiff's exhibit 28, is that summary as it was introduced a complete summary of the sales for the period covered? A. It is not a complete summary.

Q. Now, did you, prior to the introduction of that document in evidence, prior to the time cause any sheets to be removed therefrom?

A. Yes, I did.

Q. And when did you find and discover, find that sheet, Mr. Bruch?

A. After the testimony yesterday I did check our files and papers and found that we had the summary sheet. Because of the claim we had filed, we had it to support the amount that was in the claim.

Q. Will you give us that summary sheet that you have?

Mr. Grupp: Might we ask this be marked as

(Testimony of Jay Bruch.)

plaintiff's exhibit for identification next in order?

The Clerk: Plaintiff's exhibit No. 30 for identification.

Q. (By Mr. Grupp): Now, Mr. Bruch, on this sheet there is some writing in addition to some type-written notes? A. There is.

Q. You have examined that this morning, have you? A. I have.

Q. Whose writing appeared thereon?

A. Part of the writing is mine, and the other part of the writing is by Mr. Charles Robinson, who was employed by the firm of John F. Forbes & Co., and who worked on the papers for claim for refund.

The Court: Employed by whom?

The Witness: John F. Fobes & Co.

Q. (By Mr. Grupp): The name of the individual other than yourself is——?

A. Charles Robinson.

Q. And when was Charles Robinson employed by your firm?

A. He was employed by our firm for I think it is approximately one year prior. That is the answer, approximately one year.

Q. Do you know when that was?

A. It is about the year 1948, roughly the entire year 1948, roughly speaking.

Q. And do you know where Mr. Robinson is today?

A. He is now employed by the Internal Revenue Department.

(Testimony of Jay Bruch.)

Q. And is he in San Francisco?

A. To the best of my knowledge he is. [145]

Q. And prior to the time he worked for you, do you know by whom Mr. Robinson was employed?

A. Employed by the Internal Revenue Department.

Q. In other words, his employment with you was interim employment? A. It was.

Q. Employed first by the Internal Revenue and by you and then went back to the Internal Revenue?

A. That is correct.

Q. Where he still is, so far as you know?

A. That is right.

Q. I hand you exhibit No. 30 for identification. Can you just tell us which of the writing which appears on that was Mr. Robinson's writing?

A. The words "comparable figure" and the amount of "\$89,529.17" and then two ratios, the ratio of \$86,054.86 to \$87,822.90, which was equivalent to 97.9 per cent, and the ratio of \$86,054.86 to \$89,529.17, or 96.1 per cent.

Q. Now, the rest of that writing on there is your own, is that correct? A. That is correct.

Q. Now, Mr. Bruch, where did you get this sheet?

A. That sheet was taken by me from—may I refer to the number of that exhibit?

Q. Yes. [146]

A. From what has been introduced as exhibit No. 28.



(Testimony of Jay Bruch.)

Mr. Grupp: We offer in evidence, your Honor, plaintiff's exhibit 30 and identify it for the record as a part originally of plaintiff's exhibit No. 28.

Mr. Collett: I am going to object at this time, if the Court please; the foundation completely hasn't been laid yet and why it was taken out of the record, why it wasn't a part of the record when it was introduced here as a complete record, coming in now with another sheet of paper. The Court already advises it wants to terminate this case at 12:00 o'clock.

The Court: Let me see it.

Mr. Collett: Papers taken out of the exhibits purportedly to be complete and the witness testifying it is complete and then we find additional papers coming in, we could go on this case forever.

The Court: I will reserve ruling on it. I doubt that I will admit it.

Mr. Grupp: In view of the Court's statement, might I lay further foundation?

The Court: You can try.

Q. (By Mr. Grupp): Mr. Bruch, at the time the plaintiff's exhibit 30 for identification was first seen by you, where was it?

A. It was included in the folder that has been submitted as exhibit 28.

Q. And was it clipped in with the rest of the typewritten pages? [147]      A. It was.

Q. And what was the purpose—did you yourself remove the document from what is now plaintiff's exhibit 28?      A. I did.

(Testimony of Jay Bruch.)

Q. And what was the purpose of your removing it?

A. I removed it for the reason that the figures in our claim for refund used some of the figures which were on that summary sheet, and as a matter of fact, Mr. Robinson's computation of the ratios which I read off, are actually the figures which are quoted in the claim for refund which he assisted in preparing for our firm.

Q. And you retained that document in your files until you presented it in court this morning?

A. Yes, that is right, from the time I removed it.

Q. Now, Mr. Bruch, I hand you plaintiff's exhibit No. 17——

The Court: Is this re-direct?

Mr. Grupp: Yes, your Honor.

The Court: Expecting to go back to direct on this witness?

Mr. Grupp: This is still with reference to this document, your Honor.

The Court: All right.

Q. (By Mr. Grupp): I will ask you if, upon your previous examination plaintiff's exhibit 17 contains the basic information which is contained in plaintiff's exhibits 28 and 30. [148]

A. I wouldn't call it "contains basic information," the answer would be no.

Q. Just what is 17, now?                      A. 17 is——

The Court: We have gone through that. I want to be very careful you are not opening up on direct

(Testimony of Jay Bruch.)

on this witness. This is re-redirect, as I remember it. In other words, it is direct, cross-examination, redirect, recross, and now back on re-redirect.

Mr. Grupp: I don't think I have had any re-direct, your Honor, on this witness.

The Court: Well, we will look. Oh, yes. Had direct, cross, redirect, recross, and now back on re-redirect. There must be orderly presentation of evidence.

Mr. Grupp: Frankly, your Honor, I don't dispute your Honor's notes——

The Court: That was my recollection and my notes verify it. I can tell you the questions asked on cross-examination and redirect and then recross.

Mr. Grupp: Mr. Bruch, just one or two other questions, then.

Q. Can an audit of Mr. Maroosis' books be conducted without reference to plaintiff's exhibit No. 18, plaintiff's exhibit No. 17, plaintiff's exhibit No. 19——

The Court: Be conducted without reference to 18, 17, 19, is that right? [149]

The Witness: Yes, sir.

Q. And 15.

Mr. Collett: I object, if the Court please; that is incompetent, irrelevant and immaterial.

The Court: Well, I will let him answer the question.

Q. (By Mr. Grupp): Do you want to examine any of these records?

A. May I examine that exhibit there?

(Testimony of Jay Bruch.)

Q. You are referring to the ledger?

A. Yes. An audit could be examined without the exhibits which you have mentioned, except exhibit No. 17. In my opinion, it would be necessary to have exhibit 17 in order to make an audit of the books.

Q. And exhibit No. 17—well, we have that already.

In posting the sales to the ledger, from what records are those sales posted?

The Court: Is this re-redirect?

Mr. Grupp: Your Honor, as I understood the examination of the witness on cross, the——

The Court: I am not talking cross, you have had redirect.

Mr. Grupp: Frankly, I can't distinguish in my mind what was asked on cross and if there was a recross, I frankly admit that to the Court.

The Court: We will never be through with this case.

Mr. Grupp: I have one other question. [150]

The Court: One question?

Mr. Grupp: This question I just asked and one other question.

The Court: Read the question.

(Question read by the reporter.)

Mr. Grupp: I should have changed the last word "posted" to "determined."

Q. From what—pardon me, in posting monthly sales to the ledger, from what records are the sales determined?

(Testimony of Jay Bruch.)

A. They are determined from the information appearing in exhibit No. 17.

Mr. Grupp: I am going to waive the other question.

The Court: All right.

### Recross-Examination

By Mr. Collett:

Q. Mr. Bruch, that assumes the accuracy of the daily sales?

A. No, it does not, because the accuracy—the entries would be made——

Q. That is exhibit No. 17?

A. Exhibit No. 17.

Q That is based on the daily sales, isn't it, and it doesn't show what the daily sales are? You assume the accuracy of the daily sales when you take the recapitulation, isn't that right?

A You say when I take the recapitulation?

Q. You stated that the daily sales come from exhibit 17, that is a [151] recapitulation, isn't it, of the daily sales, the actual sales that were made?

The Court: No, counsel, your question answers itself. I am going to hold—if it is assumed that exhibit 17 is correct, and is shown it isn't correct, then, what is?

Mr. Collett: No further questions, if the Court please.

The Court: All right.

Mr. Grupp: Step down.

Plaintiff rests, your Honor.

The Court: All right. Now, the plaintiff is subject to cross-examination. Mr. Maroosis.

The Clerk: You have been sworn. Please take the stand.

NICK W. MAROOSIS

resumed the stand, previously sworn.

Cross-Examination

By Mr. Collett:

Q. Mr. Maroosis, your exhibit No. 1, which shows the sale of the establishment—a certificate of an individual doing business under a fictitious name, you advertised as of March 13, is that right, that you were doing business under a fictitious name as an individual?      A. I believe so.

Q. But actually as of that time the partnership was not terminated?

A. I don't remember. It was about that time.

Q. Didn't you state you took over the business on April 1?      A. Yes, sir.

Q. Then it wasn't terminated on March 13?

A. I believe it was in the process of being terminated.

Q. But you advertised that you were doing business as an individual on that day?

A. I think an agreement had been reached and it was just a matter of the formalities, or the legal papers were holding up the——



(Testimony of Nick W. Maroosis.)

Q. What kind of a partnership was this between you and Mr. Kosloff?

A. A normal partnership.

Q. Equal share in the profits? A. Yes.

Q. And in the losses? A. Yes, sir.

Q. And how was the business managed and the business conducted?

A. How was it managed?

Q. Managed, yes.

A. Managed it to the best of my ability.

Q. What did you do?

A. I didn't do anything.

Q. You didn't do anything? A. No, sir.

Q. What do you mean, you didn't do anything at all with regard [153] to the business?

A. Well, the arrangement that was had was that Mr. Kosloff was to draw, as I recall originally, \$50 per week, if my memory serves me correctly, and that was his share for the working end of the business, and later on it became \$75 a week, and later on it became \$100 a week, \$100 a week that he was drawing over and above what I was drawing. In other words, he was drawing \$100 a week, because I wasn't a working partner, he was the working partner. And I believe it was on or about April 1st that I started drawing a salary, as I recall. I am not sure, I wouldn't want to be quoted. I mean I am just speaking from my memory.

Q. When did you enter into this partnership?

(Testimony of Nick W. Maroosis.)

A. I believe in '41, I think October; possibly shortly before that.

Q. And the partnership concerned which of the stores? A. Just the 458 Geary Street.

Q. Just 458 Geary Street? A. Yes, sir.

Q. Were you at 458 Geary Street selling merchandise?

A. I was there quite a bit after April 1st.

Q. Prior to April 1? A. Very seldom.

Q. What bank accounts did you have for the 458 Geary Street store prior to April 1, 1944? [154]

A. At the Jones-Geary branch of the Bank of America.

Q. Any other? A. No, sir.

Q. And in whose name was that account?

A. Mr. Kosloff's and myself.

Q. And who signed the checks?

A. Either Mr. Kosloff and myself.

Q. Did you sign any?

A. I imagine I did.

Q. Don't you know whether you did or not?

A. Well, I should think I would, naturally.

Q. Did you or did you not sign checks during this period?

A. If you give me a specific check I will be able to answer yes or no. You will probably find that I did. I was full-fledged to sign and I probably signed most of them.

Q. Now, Mr. Maroosis, we have had three figures

(Testimony of Nick W. Maroosis.)

that have been presented to the Court concerning daily sales for the period January 1 to March 31, 1944. A. Yes, sir.

Q. The first figure, \$35,450.93; the second—that is taken from the daily sales record—the second, \$60,566.48, which is reflected in your return to the State Board of Equalization; the third figure, \$90,727.53, which figure was determined by the State Audit to be the quantity of, or value of the distilled spirits sold by you during the period from January 1, 1944, to [155] March 31, 1944. Will you explain to the court the differences in those particular figures as a matter of the actual sales of the distilled spirits? A. What difference?

The Court: Just a moment, that is enough. You may answer the question.

A. Well, the first figure I believe is the figure that was not complete as of the sales. It was an incomplete figure of the sales between April—between January 1 and April, or March 31, 1944. When I was up on the stand here before I was told to answer it yes or no and I answered it yes or no and read the figures contained therein, which were incomplete. Is that it? Shall I go further, your Honor?

The Court: Whenever you think you have answered the question.

The Witness: Yes, I answered the question. This 35—now, with regard to your second figure of 60, we were in error in our report to the State Board.

(Testimony of Nick W. Maroosis.)

The audit the State Board made confirmed the fact, or I should say, we later checked it to be true, that the distilled spirits that should have been reported should have been 96. something, 41, I believe, or 49, something of that nature, and that was the figure that we ultimately paid on because we found the figure to be true and correct through our own audit, through our own check of the State Board's audit.

Q. The accountant indicated the \$86,000, according to your books, is the figure which shows your sales during that period. Will you please explain and answer my first question: What is the difference between \$35,450.93——

Mr. Grupp: Just a minute, I am going to object on the ground that has been answered.

The Court: He says it was incomplete.

Q. (By Mr. Collett): Wherein was it incomplete?

A. Well, inasmuch as the entire book was not there, the entire sheets, the balance of the sheet was introduced this morning.

Q. What do you mean, the balance of the sheet was introduced this morning?

A. The sheet that was introduced this morning makes up the difference of the figures, does it not?

Q. By that you mean this figure of \$52,331.97, which appears on plaintiff's exhibit 30 is whiskey?

A. I believe so.

Q. Where did that figure come from?

A. That is Three Rivers whiskey. It is case goods.

(Testimony of Nick W. Maroosis.)

Q. What Three Rivers whiskey?

A. The Three Rivers whiskey we had on hand.

Q. When?

A. In that particular period.

Q. Where was this Three Rivers whiskey?

A. Where was it? [157]

Q. Yes. A. It was in the store.

Q. When?

A. Starting from February 25, or starting from February, I believe, I wouldn't want to be quoted on that day, starting somewhere in February, some day after February 14, and was inclusive until March 31, 1944, at 458 Geary Street.

Q. Was the whiskey in the store on March 31, 1944?

A. No, sir. It was—it had been previously in the store, had been sold. That is the sales you are looking at, sir.

Q. Well, where is there any record of the sale of this whiskey? A. In exhibit No. 17.

Q. Would you show it to me?

A. Surely, which specific day?

Q. You have given me a figure of \$52,331.97, which you say represents the sale of Three Rivers whiskey.

A. You have to understand this: that if—this is only elementary accounting—if we buy 775 cases of a whiskey and that if we buy that whiskey on February 15 and that on the 31st of March of the same year of 1944 that we have only 275 cases left, you can only assume that 500 cases was sold.

(Testimony of Nick W. Maroosis.)

Q. And that you consider to be elementary accounting, is that it?      A. Yes, sir.

Mr. Collett: Mark this for identification.

The Court: Are you objecting to Exhibit 30? I have not [158] ruled on it yet.

Mr. Collett: I am not making an objection; trying to show what whiskey, to find out about that figure of \$52,000.

The Clerk: This will be defendant's exhibit A for identification.

Mr. Grupp: May I see that, counsel?

Mr. Collett: I might state the witness was here from the San Francisco Warehouse, if the Court please, and this document was shown to counsel for the plaintiff, and as I understand it, it was stipulated it was a correct records of the Three Rivers whiskey in the warehouse on the date the record shows. There is no objection?

Mr. Grupp: We have no objection.

The Court: Exhibit A is admitted without objection.

Mr. Grupp: So far as we are concerned.

(Whereupon warehouse record, previously for identification, was received in evidence and marked defendants' exhibit A.)

Q. (By Mr. Collett): Mr. Maroosis, calling your attention to defendant's exhibit A, that shows that 775 cases of Three Rivers whiskey was in the San Francisco Warehouse as of February 25, 1944, which represents 775 cases. Now, on March 2, 1944,



(Testimony of Nick W. Maroosis.)

cases were delivered to 458 Geary Street. Can you show in the records the disposition of the 100 cases that were withdrawn on March 2?

A. I don't see why not. I mean, I can't specifically show [159] where an individual bottle was sold. I know a grocery store couldn't tell where they sold so many cans of condensed milk.

Mr. Collett: If the Court please, I asked——

The Court: You asked whether you can show that in the records.

A. We can show sufficient sales to offset the sale of the merchandise the gentleman is speaking of.

Q. (By Mr. Collett): Well, will you show from the exhibits that are here—these are your records—just wherein 100 cases of Three Rivers whiskey was disposed of.

A. On the 26th, the day following—what date was that you said: Will you give me that date again, please?

Q. March 2.

Mr. Grupp: Might the record show the witness is reading from plaintiff's exhibit No. 17.

A. On March 2, is that what you said?

Q. (By Mr. Collett): March 2.

A. On March 4 there was \$2,511.61 in sales. On the 6th there was \$2,332. in sales, and I should imagine that was principally Three Rivers.

Q. You don't know?

A. It would have to be. We have nothing else in the store in the line of whiskies to speak of. Certainly would be confirmed by the sales there.

(Testimony of Nick W. Maroosis.)

Q. Is your daily sales record for the—plaintiff's exhibit No. [160] 18B—can you find it in there?

A. On March 4, according to the sheets you have just given me, the exhibit No. 18, the sales for that particular day for all merchandise other than Three Rivers, was \$114.82.

The Court: Other than Three Rivers was how much?

A. Was \$190.81—I am sorry, I made a mistake on that figure—\$190.81. If you will total them you will find them to be correct, the daily sales for that particular day was \$2,511.61.

The Court: \$2,511.61?

The Witness: \$2,511.61, so the sales of Three Rivers for that particular day were the subtraction of \$190.81, the subtraction from \$2,511.61, which would be approximately \$2300.

Q. (By Mr. Collett): Your claim is that you sold 100 cases of Three Rivers on March 4 for \$2300?

A. Claiming that there were sales in that amount of approximately \$2300.

Q. You mean sales that are not recorded in this book?

A. Yes, sir; yes, sales, case merchandise.

Q. Well——

A. You see, I was not in the store. Mr. Kosloff was still in charge of the store. I never took over until April 1, 1944, at which time the inventory was taken, then I was in absolute control of the store.

(Testimony of Nick W. Maroosis.)

Mr. Collett: I ask that the witness' answer be stricken out as not responsive to that question.

The Court: Denied.

Q. (By Mr. Collett): Mr. Maroosis, how many cases of Three Rivers were sold on March 4?

A. I just had it here; I just showed it to you.

Q. Show me where it says anything about Three Rivers.

A. That is all the merchandise that was in the store, had to be Three Rivers, everything listed in the book, the balance would have to be Three Rivers whiskey.

Q. That was all the merchandise you had in the store?

A. To the best of my knowledge, everything was sold was written in that book, excepting the case sales.

Q. With the exception of the case sales?

A. Yes, sir.

Q. Now, on March 6 another 100 cases were withdrawn from the San Francisco warehouse?

A. Yes, sir. On March 6, there was—March 6 the sales for March 6 in distilled spirits was—in distilled merchandise in that book was \$164.49, and sales for March 6 were \$2,332.29.

The Court: \$2,332.29?

The Witness: \$2,332.29, so the subtraction of \$164.49 from the figure of \$2,332.29 would be the approximate sales of Three Rivers.

Q. Now, between the dates of the 3rd or the 4th

(Testimony of Nick W. Maroosis.)

and 6th, as you stated, as of the 6th, how many cases of Three Rivers did [162] you have left?

A. I don't know.

Q. You don't know? A. No.

Q. 200 cases have been withdrawn, but you don't know how many cases you have left out of the 200?

Mr. Grupp: As of March 6, was that question?

Mr. Collett: Yes.

A. There was no inventory taken on March 6.

Q. On these sales that don't appear in your books, how did you get those in the cash register?

Mr. Grupp: Just a minute, I am going to object to the question. It is assuming something not in evidence, unless you specify which book you are referring to.

The Court: Overruled.

A. Yes.

The Court: You may read the question.

(Question read by the reporter.)

A. Well, there was an auxiliary sales sheet. I will have to explain that. May I explain that?

The Court: Yes.

The Witness: The cash register at 458 Geary Street was a small cash register unlike the cash registers at the other stores. You could only ring sales, as I recall, to the amount of—I don't remember the amount—it was a smaller register, [163] nevertheless. I believe the amount went to 999, if I remember correct, \$999.99. Nevertheless, where there was sales in large quantities of money, that

(Testimony of Nick W. Maroosis.)

was put on an auxiliary sheet and then at the end of the day the particular whiskey was deducted from the, or added, I should say, to the cash register reading and subsequently banked.

Q. That was added by a pencil or an ink amount at the bottom of the paper, is that it?

A. If the tape checked, yes. If you will notice on that exhibit No., what is that exhibit?

Q. This one? 18B.

A. If you will notice at the end of each day you will notice on the left hand, the right hand side you will notice a check mark at the end of each particular day. You will notice the notes that was on the tape check and that in turn was added to the cash of the day and it was banked subsequently.

Q. How could we determine the actual sale price of one case of Three Rivers?

A. Well, I imagine the sale price would be in there, wouldn't it, except in cases where large lots may have been sold for a few dollars cheaper.

Q. Or for a few dollars more?

A. It is hardly possible. Selling in larger quantities, you usually sell cheaper, not more.

Q. There is no way you can tell what you actually sold a case [164] of Three Rivers for, it isn't entered in plaintiff's exhibit 18B.

A. Well, that would be the ceiling. If anything, it would be sold below that figure. Three Rivers was an inferior whiskey.

Mr. Collett: I ask that that answer be stricken.

(Testimony of Nick W. Maroosis.)

The Court: It will be stricken. Read the question.

(Question read by the reporter.)

A. Yes, sir.

Q. (By Mr. Collett): Other than is entered in this daily perpetual inventory, exhibit 18B, is there any way by which you can show us what you sold a case of Three Rivers whiskey for during this period of March 2 or March 6, which period we are concerned about, or any period during the month of March, at any time during the month?

A. It is elementary that if it would be sold in larger quantities it would be sold for a few dollars less, sold in quantity——

The Court: That doesn't help. You were asked, is there any way you can tell what it was sold for.

The Witness: Yes, it would have been sold cheaper than that, at that price or cheaper.

The Court: All right, you may proceed.

Q. (By Mr. Collett): Now, Mr. Maroosis, on defendant's exhibit A shows that on March 10, 100 cases were delivered from the San Francisco Warehouse——

The Court: What exhibit is this?

Mr. Collett: Defendant's exhibit A. Would the Court like [165] to look at this exhibit? It has been admitted in evidence.

The Court: All right, I just wanted to have the reference to the exhibit. Shows 100 cases delivered——



(Testimony of Nick W. Maroosis.)

Mr. Collett: March 10.

A. That would be answered in the same manner.

Q. Your answer would be the same for that 100 cases? A. Yes, sir.

Q. You don't know then, as of March 10, how many cases you have left out of the previous 200 that were withdrawn—know how many were left out of the 100 that were drawn out March 10, is that so?

A. I want to say this: I don't know physically. However, it is only natural that we wouldn't be drawing unless we needed it, because only selling the first 100 cases and drawing 100 cases, selling 100 cases and drawing 100 cases. If we sold it, we withdrew it.

Mr. Collett: I move that answer be stricken.

The Court: I will let it stand for what it is.

Q. (By Mr. Collett): Now, on March 30, 1944, it shows 200 cases delivered? A. Yes, sir.

Q. How do you account for the 200 cases?

A. I account for it in the same manner.

Q. Show us where you account for it in the same manner.

A. Well, on March 30 the sales is—I believe you have the [166] papers there, counsel.

On March 30, the sales other than Three Rivers was \$192.04.

The Court: \$192.04?

The Witness: \$192.04.

The Court: All right.

(Testimony of Nick W. Maroosis.)

A. (Continuing) The sales, the total sales for that period, day, were \$2,433.06. Should I do the 31st too while I am here?

The Court: You may.

A. (Continuing) The sales for the 31st were \$223 and the total sales for the 31st were \$2,663.90.

Q. Do you know how many cases of Three Rivers whiskey are accounted for in plaintiff's exhibit 18B in the daily sales or perpetual inventory?

A. Yes, sir.

Q. How many?

A. In dollars I can give you—I can't give it to you in—I have never totaled the cases. I can give you it in dollars.

Q. March 31 shows, I see it is listed here, there are two cases of Three Rivers? A. Yes, sir.

Q. There is a figure circled that says 80?

A. Yes, sir.

Q. What does that mean, sold for \$40 a case?

A. Including the sales tax. [167]

Q. Including the sales tax? A. Yes.

Q. On March 31 at the bottom, there is no number on this page, it is the second page from the fourth page from the end. March 31 shows again two figures circled, 80 and cases of Three Rivers; is that likewise two cases? A. Yes.

Q. At \$40? A. Yes.

Q. Now, what would be the total sale price of 200 cases of Three Rivers?

A. Well it depends on how it is sold. If it is

(Testimony of Nick W. Maroosis.)

sold in individual cases it should be the case times \$40, including the sales tax, or sold in larger quantities it could be down to \$33 a case.

Q. Yes. Now, what we were discussing, we reached the point where 200 cases had been withdrawn as of March 30. For the month of March so far 500 cases have been withdrawn.

A. Yes.

Q. On March 30, the morning of March 31, before you opened business, how many cases of Three Rivers whiskey did you have left of the 500 cases that had been withdrawn?

A. Be no way of telling.

Q. No way of telling? A. No, sir. [168]

Q. You don't know? A. No, sir.

Q. Now, on March 31 you withdrew 200 cases?

A. Yes, sir.

Q. What happened to those, the 200 cases of March 21?

A. I, think they remained in our inventory didn't they? I believe we had 275 cases left on April 1 when we declared our inventory.

Q. You testified on direct examination that at the 458 Geary Street, two thousand and fifty-six bottles was the way it was broken down?

A. Yes.

Q. Two thousand and fifty-six bottles accounted for in the inventory? A. Yes, sir.

Q. Which represented 171 and  $\frac{1}{3}$  cases?

A. Approximately.

(Testimony of Nick W. Marosis.)

Q. And you saw the 100 cases at 499 Haight Street?      A. Yes, sir.

Q. When did you put the 100 cases there at 499 Haight Street?

A. I don't remember; I imagine it was on the 30th or 31st.

Q. Why were they put at 499 Haight?

A. We had very little room at 458 Geary and no business, no place to put merchandise.

Q. Where were they put at 499 Haight Street?

A. In the basement through a slide.

Q. What sort of an arrangement is that at 499 Haight Street?      A. One of our liquor stores.

Q. To get into the basement how do you accomplish it?

A. Well, at that time the arrangement was this: but prior, or I should say, subsequently, we had——

Q. At the time——      A. A trap door.

Q. The cases were put into the basement?

A. Put in through a slide. I already answered that.

Q. What sort of a slide?

A. Just an ordinary slide, slide it down and——

Q. What size is the opening that gets into the basement?      A. Prior?

Q. On the date that the cases were put in there, what was the size of the opening?

A. Should imagine probably six feet by four feet, or five feet, six feet by five.

(Testimony of Nick W. Maroosis.)

Q. Was any other liquor or other goods stored in that basement at the time?

A. None that belonged to 458 Geary Street.

Q. Was there any there belonged to 499 Haight?

A. More than possible there was some wine there.

Q. Do you know?           A. I don't know, no.

Q. You don't know?       A. No, sir.

Q. You don't know whether there was anything down there or not?       A. No, sir.

Q. Do you know what the date was that that whiskey was put in that basement you testified to?

A. It would have to be—it would have to be either two or three days. As a matter of fact, before you saw that record, which you haven't allowed me to see, I thought it was, I recall on the 29th—as a matter of fact, I still believe it was taken out the 29th, and the record not made until the 30th. I called the San Francisco Warehouse and asked for the same records and they said they had been destroyed years 'ago. I don't know how to get it, it doesn't mean anything, but tell you what—how my memory serves me. I believe it was taken out on the 29th and well, this record wasn't made until the 30th.

Q. When were the 200 cases taken out that were shown on the 31st?

A. I imagine taken out on the 30th or 31st. I mean, whichever the warehouse preferred. We were in the habit of taking them out during the morning and some time during the afternoon, depends on when they were taken out.

(Testimony of Nick W. Maroosis.)

Q. You don't think that 200 cases shown as having been withdrawn on the 31st of March were actually withdrawn the 31st, or was withdrawn the 30th?

A. It says the 31st, and I am inclined to believe the record.

Q. Then you believe the record as to the previous entry?

A. Yes, sir.

Q. Which of this group of 100 cases was stored in that?

A. I don't remember, sir.

Q. You don't remember?

A. No, sir.

Q. Did you tell Mr. Hedrick on May 2 that there were 100 cases at 499 Haight Street that belonged to 458 Geary?

A. No, sir.

Q. Why not?

A. Oh, I would rather not answer it.

Mr. Grupp: I think you should answer any question put to you.

A. I asked—very well, if I am, I will. I asked Mr. Hedrick when he came in, offered my inventory and asked him if we could take this check, check my inventory, be faster, save a lot of time. Mr. Hedric says no. Things got very belligerent, said the only possibility, the only thing that was impossible was he or I could make a nigger baby. We were both very belligerent, I was fighting mad and so was he.

Mr. Grupp: I submit that should be stricken.

The Court: It will stand.

Q. (By Mr. Collett): You did not, however, tell Mr. Hedrick——



(Testimony of Nick W. Maroosis.)

A. I just told you we were not speaking from that point forward. [172] He took his own inventory and he told me it was subsequently 108 gallons overstated, and at that time I explained to him there were 60 cases at that time at the Haight Street store. We had cooled off by then.

Q. Were there any other cases of any kind of whiskey that you didn't report to Mr. Hedrick that you might have somewhere else? A. No, sir.

Q. Don't you think it was necessary to compute an inventory as of May 2 and endeavor to relay it back to April 1? Do you know what whiskey you had at the other places that might have belonged to 458?

A. It would have been obvious that the inventory would have to come in as overstated. Mr. Hedrick's computation could only prove one thing, that the inventory would have been overstated had I told him or had not told him, it wouldn't make a bit of difference, because our inventory was taken correctly April 1, 1944.

Q. Now, we have had the figures for the total sales for the period through 1943 and in the month of December it shows that there were sales in the amount of \$62,946.84.

The Court: How much is that?

Mr. Collett: \$62,946.84.

The Court: What month?

Mr. Collett: December of 1943.

The Court: December, 1943, sales were \$62,946.84. That [173] is from exhibit——

Mr. Collett: From plaintiff's exhibit 21. Like-

(Testimony of Nick W. Maroosis.)

wise it shows that for July it was \$10,672; August, \$10,909; September, \$13,892; October, \$15,003; November, \$13,160; December, \$62,946.84. Mr. Bruck disclosed to us from the books yesterday that from November 1, 1942, to June 30, it began at \$6,340, and maintained a slight increase from month to month up to \$9,643.77 as of June 30, 1943.

Q. How do you account for the disproportionate amount of sales in December, 1943?

A. Sales of whiskey.

Q. Sales of whiskey? A. Yes, sir.

Q. And you have no records to show what those sales consisted of? A. No, sir.

Q. Or what the sale price of any particular case of whiskey might have been? A. No, sir.

Mr. Collett: That is all.

### Redirect Examination

By Mr. Grupp:

Q. Just one question, Mr. Maroosis.

Might I have this exhibit marked for identification, consists of two pages.

The Court: Exhibit 30 will be admitted. Such objection as there is is overruled. [174]

The Clerk: Exhibit 31 admitted in evidence.

Mr. Collett: No.

The Clerk: Did you say in evidence?

The Court: I am not saying anything about 31. Exhibit 30 I took under reservation, reserved ruling. Exhibit 30 is admitted.

(Testimony of Nick W. Maroosis.)

The Clerk: Plaintiff's exhibit admitted in evidence.

(Whereupon the document previously marked for identification was received in evidence as plaintiff's exhibit No. 30.)

The Court: Plaintiff's exhibit 31 for identification.

Q. (By Mr. Grupp): Mr. Maroosis, handing you plaintiff's exhibit 31 for identification, consisting of two sheets, and referring to the first sheet, which is a typewritten receipt from—whose signature appears on that document?

A. Mr. Hedrick's.

Q. And whose writing appears thereon?

A. Mr. Hedricks'.

Q. Now, at the time that that document was signed by Mr. Hedrick, was that signed on the date it bears, May 4, 1944?      A. Yes, sir.

Q. Now, this sheet which is attached to this receipt, was that sheet referred to in the receipt?

A. Yes, sir.

Q. And did Mr. Hedrick receive the inventory and the list of serial numbers of Three Rivers on hand at that time? [175]      A. Yes, sir.

Q. Now, at the time that this receipt was signed, plaintiff's exhibit 31, there was on hand in the Geary Street store how many cases of Three Rivers whiskey—let me strike that.

How many cases of Three Rivers whiskey were still in the Haight Street store as of May 4?

A. 60 cases.

(Testimony of Nick W. Maroosis.)

Q. And originally your inventory of April 1, 1944, disclosed how many cases at the Geary Street store? A. On which day?

Q. On April 1, 1944.

A. 3,256 bottles, I believe, which is about 271 cases.

Q. I am referring to how many in the physical inventory of the Geary Street store taken April 1, how many cases of Three Rivers were at the Geary Street store? A. About 171.

Q. The other 100 were at the Haight Street store? A. Haight Street.

Q. Now, you handed Mr. Hedrick on May 4, 1944, a copy of your written inventory as acknowledged by this receipt, of the Geary Street store, is that correct? A. Yes, sir.

Q. Which showed there were 176 cases at the Geary Street store? A. Yes, sir.

Q. At the same time you handed him a list of 231 serial numbers [176] of cases of Three Rivers on hand at Geary Street as of April 1, 1944?

A. Yes, sir.

Q. And handing him the receipt on the inventory and this list of 231 serial numbers, you got that receipt from him? A. Yes.

Q. Which is plaintiff's exhibit 31.

We will offer plaintiff's exhibit 31 in evidence.  
The Court: Exhibit 31 admitted.

(Thereupon the document previously marked for identification was received in evidence as plaintiff's exhibit No. 31.)

(Testimony of Nick W. Maroosis.)

The Court: Let me see it.

Q. (By Mr. Grupp): Incidentally, Mr. Maroosis, I think counsel will admit this, but the law requires serial numbers to be destroyed on cases when they are opened? A. Yes.

Q. So that you could only give Mr. Hedrick the cases, the case numbers, serial number of cases which were still intact and unopened?

A. Yes, sir.

Q. So that this accounted for 231 of the 276 cases, would indicate what to you, Mr. Maroosis?

A. It would indicate that the balance of the cases were either on the shelves, in the warehouse, or were on display, or were made available for sale.

Q. In unbroken cases?

A. They were out of the cases.

Mr. Grupp: I have no further questions.

### Recross-Examination

By Mr. Collett:

Q. I have no questions about that, if the Court please. I have maybe two more questions with regard to that 100 cases at 499 Haight, just take a moment.

Mr. Maroosis, who transported the 100 cases to 499 Haight Street?

A. I don't remember.

Q. You don't remember?

A. It was—must have been one of my employees, possibly could have been any one of my employees.

Mr. Collett: That is all.

Mr. Grupp: Step down.

The plaintiff rests.

The Court: Well, it seems to me that this is a fairly appropriate time for our morning recess. We will have it. Ten minutes.

(Short recess.)

Mr. Collett: I might state to the Court that I am sure we are going to finish before 12:00 if counsel does not take too long in examining the government's witnesses.

The Court: All right, we will see. [178]

Mr. Collett: Mr. Hedrick.

### RAYMOND C. HEDRICK

called as a witness on behalf of the defendant;  
sworn.

The Clerk: Will you state your name to the Court, please?

A. Raymond C. Hedrick.

### Direct Examination

By Mr. Collett:

Q. By whom are you employed, Mr. Hedrick?

A. The United States Government, Internal Revenue Bureau.

Q. And the period from July 1st, 1943, to May 2nd, 1944, by whom were you employed?

A. The Alcohol Tax Unit of the Internal Revenue Bureau.



(Testimony of Raymond C. Hedrick.)

The Court: July 1, 1943, to when?

Mr. Collett: May, 1944.

Q. How long had you been employed by the Alcohol Tax Unit?

A. Did you say how long?

Q. Yes. A. Since 1936.

Q. And when was your association with that unit terminated? A. 1945.

Q. Month? A. November.

Q. And you were reassigned or transferred, were you, to the Internal Revenue?

A. Well, I transferred to the Intelligence Unit of the Internal Revenue Service in which position I am now employed. [179]

Q. Now, in the performance of your duties in the Alcohol Tax Unit, when did you first make the acquaintance of the plaintiff in this case, Mr. Maroosis?

A. In December, approximately December 7 or 8 of 1943, I was assigned to work with an inspector to make inquiries concerning the sales of black market, black marketing in liquor.

According to my records, on December 7, December 8, I called at the liquor store, 458 Geary Street. We were assigned to make inquiries of representative liquor stores throughout the city. December 7 I talked to Mike Kosloff at this store. On December 8 Mr. Maroosis was at the store; I talked to Mr. Maroosis. That is the first time I met him, Mr. Maroosis.

(Testimony of Raymond C. Hedrick.)

Q. In the conversation that you had with Mr. Maroosis on December 8, was there any information relevant to the issue of this case? A. No, sir.

Q. After December 8th, when was your next contact with Mr. Maroosis?

A. I believe it was about December 18th.

Q. What was the subject matter of that contact?

A. Our inquiries and information given me through our records of sales submitted by wholesale liquor dealers, the form 52-b, had shown our unit that Mr. Maroosis purchased liquor in considerable quantities in the East, which was shipped out to the Pacific Coast, which liquor was not handled locally. And [180] we had been instructed to, in our inquiries, to ascertain if possible to whom this merchandise was sold.

In making such inquiries, I had occasion to go back and check with Mr. Maroosis, and I believe with Mr. Kosloff, to verify or obtain additional information concerning such sales.

Q. Was that in the month of December?

A. That carried through December and January and into the first part of February.

Q. First part of February. Did you ascertain all the information that you sought?

A. No, sir.

Q. What information didn't you get that you sought?

Mr. Grupp: I don't see the relevancy of that; I will object.

The Court: Overruled.

(Testimony of Raymond C. Hedrick.)

A. Information concerning black market liquor is very, very difficult to obtain. At times we would find cases of the types of liquor brands which Mr. Maroosis had sold, those mentioned previously, three of which, as I recall, were Ben Franklin Whisky and Silver Moon Whisky—

The Court: Benjamin Franklin?

The Witness: Benjamin Franklin.

The Court: Silver Moon.

The Witness: Silver Moon, and Captain Jack. There was another one, Black Gold, but I believe that was sold by one or [181] two others besides Mr. Maroosis. In endeavoring to trace this merchandise, we would check with the purchaser where we found evidence it had been purchased by a bar, and tried to trace the sale back to Mr. Maroosis, and it was almost impossible to obtain evidence of the direct sale by Mr. Maroosis—I say Mr. Maroosis; I mean the store at 458 Geary Street known as Joseph's, but which was often associated with Mr. Maroosis as being the manager, or operator.

Q. Every time that you went there, was Mr. Maroosis there except the first time, as you stated?

A. I don't recall Mr. Maroosis there on all occasions.

Q. What about the Ramshead Whisky, would that come into that category?

A. No, sir; that is an Alfred Hart Whisky.

The Court: Ramshead—that is not in the case.

Q. And the Three Rivers, what about it?

(Testimony of Raymond C. Hedrick.)

A. That came into the picture later.

Q. Later?           A. Yes, sir.

Q. And you say the early part of February—when was your next contact with Mr. Maroosis or the store known as Joseph's, at 458 Geary?

A. From early in February until mid-March, I had other assignments. In the middle of March I came back to San Francisco and continued my inquiries concerning black market liquors, and [182] during the period, checking our 52-b records, I ascertained Mr. Maroosis had purchased 775 cases of Three Rivers Whisky.

Q. I see.

A. From the Hart Corporation, and this whisky was stored at the north branch of the San Francisco Warehouse Company.

Q. Now, as of March 31——

The Court: Stored where?

The Witness: At the north branch of the San Francisco Warehouse Company.

Q. As of April the 1st or March 31, rather, midnight, the deadline of the inventory, is that so?

A. That's right.

Q. On April 1st with regard to the three stores operated, in regard to this particular matter, 499 Haight Street, 458 Geary Street, 2066 Fillmore Street, did you make a spot check on April 1 with regard to the inventory of each store?

A. I did.

Q. Was there anyone with you?

A. Yes, sir.

(Testimony of Raymond C. Hedrick.)

Q. Who?

A. Inspector John Arisco was with me on that day.

Q. Now, you made a spot check of the three stores, 458 Geary Street, 499 Haight Street, 2066 Fillmore Street?

A. Yes, we did.

Q. What time of day was it that you went to 499 Haight Street? [183]

A. It was in the late forenoon.

Q. Late forenoon. Was the store open for business?

A. No, sir.

Q. Who was at the store in charge of it at the time?

A. I don't recall who was at the 499 Haight Street Store.

Q. Did you see anything there of 100 cases of Three Rivers whisky?

A. I did not.

Q. Did anyone present at the store advise you there was 100 cases of the Three Rivers in the basement?

Mr. Grupp: I am going to object on the ground there is no foundation laid, unless the question is asked——

The Court: Yes, I will sustain the objection unless shown there is a question asked.

Q. In making the spot check, Mr. Hedrick, what did you do?

A. We made just what the term applies, spot-checking of merchandise; rather than counting individual bottles, checking full cases of merchandise. We estimate the stock on the shelves changes very

(Testimony of Raymond C. Hedrick.)

little, and we counted 36 cases of wine and 44 cases of wine in the store; three cases of rum; six cases of gin; and three more cases of rum. I listed those in my notebook at the time.

Q. Where was all the goods, the case goods stored that you saw in the store?

A. Most of the case goods was stored behind the counter in a [184] place partitioned off for storage and over a little sort of a balcony or hanging mezzanine about that particular place on the east side of that store. It is a narrow space, it is partitioned off for storage.

Q. Did you ask anybody in the store whether or not there was any other merchandise other than what you saw?

A. I did, I asked the party in charge if there was any other merchandise in the store, any other liquor, and they said there was none.

Q. Were you aware of the fact that there was a basement in that store?

A. I think so. I was in the store before, I noticed a trap door partially covered by a table, and cases of merchandise behind the partition in a little spot that one might call a—nothing more than a storage place.

Q. When you went in the store April 1, was that trapdoor exposed or was it covered with anything?

A. I couldn't say yes or no. I don't believe it was covered up, the table sat over it and the table



(Testimony of Raymond C. Hedrick.)

was used for writing; therefore it would be open underneath the table. The trapdoor would be visible.

Q. How large a trapdoor was that?

A. It is between two and three feet in width, and approximately four, four and a half, maybe five feet long, approximately the size of the table there. I believe it is smaller than the [185] top of that table on which the rostrum (indicating).

Mr. Grupp: I think we can stipulate that is about three feet by five feet.

The Witness: It isn't quite five, four, four and a half; it is approximately that size.

Q. Were you at a later date in that basement?

A. Yes, sir.

Q. When did you go into the basement?

A. Well, after we had occasion to make the inventories, and were working on the floor stock tax question, or problem.

Q. Do you remember the date?

A. No, sir.

Q. Did you go into the basement in regard to any matter involved in this matter?

A. Merely to ascertain at that time if there was liquor in the basement.

Q. When did you first know there was any liquor in the basement?

A. Last week when Mr. Maroosis advised us that he had 100 cases stored there on April 1.

The Court: First learned last week?

(Testimony of Raymond C. Hedrick.)

The Witness: Yes, sir.

The Court: A week ago today?

The Witness: It was on Tuesday or Wednesday of last week, your Honor.

Q. Was it after getting that information that you went into the [186] basement?

A. No, sir. We made examinations of all parts of the stores during the period of that—I think I was in that store probably three or four times, and when I noticed a trapdoor back there at a later date, I asked to be allowed to examine the basement. There was nothing in it of any——

Q. Can you fix the date when you first went into the basement?      A. No, sir.

Q. Was it in 1944?

A. Oh, yes; yes, sir.

Q. Was it in the month of May?

A. It would have been in the month of May.

Q. And when you went into the basement, what did you find?

A. Nothing; junk, rubbish, sticks, dirt.

Q. How did you have to get into the basement?

A. Through a trap door.

Q. Were there any stairs leading down there?

A. I believe there were some rather wobbly steps leading into that basement.

Q. Were they steep?

A. Yes; I was advised it had never been used.

Q. Could you tell from the observation of the condition of the basement as to whether or not

(Testimony of Raymond C. Hedrick.)

there had been any liquor stored within there in the past two months?

A. No, sir, I couldn't say that, nor could I say there had not [187] been.

Q. You couldn't say that on the date which was—can you fix it a little closer after May 2nd—for instance, the date you took the inventory?

A. I completed my work in that case by May 18, I believe it was, so that it was between May 2 and May 18.

Q. Between May 2 and May 18. Now, did you also make a spot check at 458 Geary Street?

A. Yes, sir.

Q. And do you recall as a result of that spot check——

The Court: When was that?

The Witness: On April 1, your Honor.

Q. The spot check is April 1, 1944?

A. Yes, sir.

Q. And do you recall, do you have any recollection of how many cases of Three Rivers Whisky was at 458 Geary?

A. We counted 178 full cases, and I believe that 3 of the cases—my notes show 180 Three Rivers Whisky, 86 per cent proof.

Q. 180 cases? A. Yes, sir.

Q. Now, on May 2, did you make an inventory, take an inventory of the merchandise at 458 Geary?

A. Yes, sir, I took such an inventory, assisted by investigator Danny Dawe, and investigator Johnnie Ure, and inspector Johnnie Coln. [188]

(Testimony of Raymond C. Hedrick.)

Q. Do you have that inventory?

A. I do. It is on the table.

Mr. Collett: I will have this marked for identification.

(Thereupon inventory was marked Defendant's Exhibit B for identification.)

Q. I show you Defendant's Exhibit B and ask you to identify that document.

A. This inventory we took at the store on May 2, part of it is in my handwriting, part of it in some other, one of the other boys' handwriting.

Q. Now, on that inventory did you list by name brands each individual item that you noted?

A. We did not.

Q. And what was your purpose in the taking of the inventory at the time?

A. To ascertain the proof gallons of the merchandise of the distilled spirits on hand in the store at the time.

Q. And this form that you used here is consistent through all the pages, is it?

A. Yes, the same form provided by our unit for such inventories.

Q. And it bears a number of different columns beginning with brand name, cases, one half pints, four-fifths pints, pints, four-fifths quarts, quarts, one-half gallons, three-quarter quarts. W. G. means——

A. That is wine gallons. [189]

Q. Wine gallons, and proof is the——

(Testimony of Raymond C. Hedrick.)

A. That is the amount of alcohol in the spirit, in the liquor.

Q. P. G.?           A. Proof gallons.

Q. Proof gallons, and on all of these pages here you have a "number four," on the first page under four-fifths quarts. That means that there were four bottles of four-fifths quarts for that particular little group of some type?

A. That is covered by that.

Q. Some type of beverage, .80 wine gallons, 89 proof, and .71 gallons——           A. That is right.

Mr. Collett: I ask this be introduced in evidence.

Mr. Grupp: May I ask the witness on voir dire?

The Court: You may.

### Voir Dire Examination

By Mr. Grupp:

Q. Mr. Hedrick, in the past several days while this case was pending, you recall conversations in the presence of myself and Mr. Collett, some of the other gentlemen in the room, in which we asked for permission to see and examine the inventory?

A. No, sir, I recall a conversation regarding the inventory, but can't recall that you have it for examination.

Q. Do you recall advising us that the examination of the inventory would serve no purpose, because you had used certain [190] codes to describe the type of liquors and whisky; instead of using the

(Testimony of Raymond C. Hedrick.)

brand name that you used initials and certain codes?

Mr. Collett: I am going to object; I don't think this is proper examination.

The Court: Overruled.

A. Yes, I think I made that statement to you that we had abbreviated the types of liquor. When I examined the inventory—I had kept it in my briefcase—and I examined it, I found generally we don't list the liquor at all either by initials or by abbreviations.

Q. You say generally. In no instance are you able to determine from this inventory the—Well, I notice right here now, now one of the pages toward the end there are “3 R”?

A. That is Three Rivers.

Q. Yes. Now, I notice up in the next—the last page—“5 BL.”

A. Probably Schenley Black Label that refers to.

Q. Outside of those two notations, there is nothing in this inventory from which you can determine the type of whisky or type of any liquor in that, is there?

A. Yes, the proof differs for the types of liquor, some liquors and liqueurs that have proofs that are associated with that liquor only. Otherwise your statement is correct.

Mr. Grupp: We have no objection to the introduction of that document.

The Court: That is Exhibit B, is it? Admitted.



(Testimony of Raymond C. Hedrick.)

(Thereupon Defendants' Exhibit B was received in evidence.)

Direct Examination

(Resumed)

By Mr. Collett:

Q. Can you, Mr. Hedrick, from the inventory, identify the items pertaining to Three Rivers Whisky? A. Yes, sir.

Q. Would you point them out?

A. On page 4 of the inventory No. 2, the only item on that page does have an identification mark, shows 67 cases of Three Rivers in cases. That would be—any bottles would be listed separately.

Q. Is there any way to identify the balance between 67 cases and 180 cases?

A. That was all that was in the store at this time on May 2.

Q. On May 2 that was all that was in the store at that time? A. Yes, sir.

Q. Now, after having taken the inventory, what process did you follow to endeavor to determine what the inventory might be as of April 1, 1944?

A. The practice by the Internal Revenue, by our office, for such routine floor stock tax checks was to take an inventory as of any particular day, when we took the inventory, and ascertain from the taxpayer's record the purchases and sales between that date and April 1. And from those figures we would compute what he should have on hand April 1st.

(Testimony of Raymond C. Hedrick.)

Q. And did you do that? [192]

A. We did.

Q. And what was the result of that computation?

A. As I recall, it disclosed that Mr. Maroosis—Joseph's store was overdeclared by, I believe, it has been referred to as 108 proof gallons.

Q. In the event you should have reason to question the accuracy of that procedure, what are you supposed to do then?

A. To use any other logical and reasonable method of ascertaining what merchandise should have been in the store, in the premises at that time.

Q. At that time you did not know that there were 100 cases of Three Rivers Whisky stored at 499 Haight Street?

A. No, sir, I did not.

Q. What reason did you have to question the accuracy of the inventory of April 1st that was made by plaintiff in this action, Mr. Maroosis?

Mr. Grupp: I am sorry; I didn't quite understand that question.

The Court: He wants to know what reason he had to doubt the accuracy of the inventory.

Mr. Grupp: We will object to that, your Honor. No proper foundation has been laid.

The Court: Overruled.

Mr. Grupp: On the further ground, your Honor, it is highly speculative, what reason——

The Court: Overruled.

(Testimony of Raymond C. Hedrick.)

A. I had ascertained from warehouse records and our own records, that Mr. Maroosis had 775 cases of Three Rivers Whiskey stored at the San Francisco Warehouse as of, I believe it was stored there on February 21, and that he had removed up to March 30, 375 cases of that whisky. On March 31 at about 11:45, shortly before noon in the morning, 11:20 a.m., I and inspector Arisco were driving government car past 458 Geary Street and observed parked at the store in front of the store a large truck bearing the Evans Truck Rental insignia on the truck. It was canvas covered on presumably a pipe frame over the cover, the body of the truck.

We watched the truck until 12:15 p.m., at which time the truck was driven from in front of the store to the San Francisco warehouse, the north branch warehouse, where Mr. Maroosis' whiskey was stored. At 2:15, still keeping the truck under observation, we saw the warehousemen truck from the warehouse out to the loading platform and load cartons resembling whiskey cartons into the truck. The truck left the warehouse at 3:00 o'clock—I might say that further there was a coupe driven by a man, which coupe I had seen and knew to be associated with Mr. Maroosis' store, which came to the warehouse, and the driver of the coupe and the driver of the truck had a conference while the merchandise, cartons, were being loaded on the truck.

At 3:00 o'clock the truck and the coupe left the warehouse [194] and followed a route to a garage

(Testimony of Raymond C. Hedrick.)

on Drumm Street, the Standard Garage, I believe it is on Drumm Street—that is down in the warehouse district of San Francisco towards the waterfront. The truck drove inside of the garage, and the coupe disappeared from our view from the car.

Inspector Arisco and I got out of our car and at different times walked past the garage and could see the truck parked towards the back of the garage. At 3:45 we observed some activity near the truck, and as I recall, we each took turns and walked into the entrance to the garage and saw two men, or man, I wouldn't say how many, transferring cartons from the large truck to a small black panel-bodied truck, a Dodge truck, that was parked also in the back of the garage.

At 4:15 this small Dodge truck drove from the garage and the Dodge truck, the small Dodge truck has a glass in the back doors, and we could see something that had been stacked inside the truck that was covered with an old blanket or some material. I followed this Dodge truck, left Mr. Arisco to watch the garage and saw this small black Dodge panel-bodied truck drive into the basement garage of a resident on San Bruno Avenue. I could only estimate what was in the truck, because it was impossible to identify——

The Court: Garage on what street?

The Witness: On San Bruno Avenue.

The Court: Yes. [195]

A. (Continuing): I have the address if it is material——

(Testimony of Raymond C. Hedrick.)

The Court: All right.

The Witness: 1348 and 1350 San Bruno Avenue.

The Court: You may proceed.

A. (Continuing) The driver of the truck alighted from the truck and opened the garage door and drove it inside and closed the door and I did not see that truck again for some days.

I returned to the warehouse, to the garage where the—the Standard Garage on Drumm Street, and Mr. Arisco advised me the large truck was still in the warehouse. I believe that at this time the coupe had driven away. It was here—about that time, I returned to the garage, probably about 5:00 o'clock.

At 7:15 we were still observing the Standard Garage where the truck was located. We had taken turns, I had had my lunch, Mr. Arisco was eating lunch. This large truck left the Standard Garage and proceeded to and parked almost in front of Joseph's liquor store. I kept this truck in sight; I parked as close as I could get to it and see the truck and it was very easy to identify this truck, as long as you could see it you could recognize it.

There were three or five, five or six cartons of whisky taken from the truck and loaded into automobiles parked at the curb, practically in front of the store. Otherwise I saw no other merchandise, no other cartons taken from the truck.

At about 8:15 this truck was driven from 458 Geary Street [196] and proceeded to and parked in front of 2066 Fillmore. That is Mr. Maroosis', one of Mr. Maroosis'—



(Testimony of Raymond C. Hedrick.)

The Court: What number?

The Witness: 2066 Fillmore.

A. (Continuing): I watched the truck until 8:40 p.m., kept it under observation until that time. During that period the driver of the truck went into the store at 2066 Fillmore and removed from the store four hand-truck loads of cartons resembling liquor cartons and loaded them into the truck. At 8:40, or approximately 8:40 p.m., the truck drove away from the store, and because of traffic conditions I was unable to follow the truck further.

That is the basis for my suspicions of the inventory as furnished by Mr. Maroosis for the store at 458 Geary Street. Suspected that it was not correct because on March 31, at 8:00 p.m., 8:40 p.m. I had concluded observing this truck and I proceeded back to the Standard Garage driving as fast a rate of speed as possible, as I could safely, picked up Inspector Arisco and until after 11:00 o'clock we drove from one store to another of the three and we saw no activity in either of the three stores, no lights indicating that anybody was working in these stores, and we did not see this truck any further that night.

The next day I checked the records of the automobile rental agency, the Evans Truck Rental Company, and ascertained the [197] truck had been returned to them at 11:40, just a very short period after we had discontinued our observation of the stores. I felt, therefore, it was impossible for the



(Testimony of Raymond C. Hedrick.)

merchandise to have been taken from the truck and deposited in any one of the three stores.

Mr. Grupp: Pardon me. Did you say was it possible to have done that?

The Witness: That it was impossible.

Q. Mr. Hedrick, the distance between the three stores involved driving in an automobile, how long would it take you?

A. Not over ten minutes to make the round trip.

Q. Ten minutes to make the round trip?

A. Not over that; might have been less.

Q. And you kept going around and around?

A. Well, in traffic conditions it might take 15 minutes; not longer than that. Traffic is bad on Fillmore Street.

Q. Thereafter what method did you pursue to endeavor to arrive at another or different computation of the inventory of the plaintiff's, Mr. Maroosis, on April 1?

A. There had been a floor stock tax inventory and return dated November 1, 1942. We decided then to use Mr. Maroosis' or rather, the 458 Geary Street store's inventory and return for November 1, 1942, as a basis for computing the entire purchases and sales for the store from that date to April 1, 1944. Conditions were different in 1942 and we felt that the inventory and return would be accurate on that date. [198] And we proceeded to do that. We made inquiry of wholesale liquor dealers who sold merchandise to Mr. Maroosis and arrived

(Testimony of Raymond C. Hedrick.)

at a figure which we believed was his total purchases for the period, and we checked that with Mr. Maroosis' figures, from his ledger, and were within, I believe, of \$41.00 of his ledger figures for his purchases. We then asked him for his total receipts—for the total receipts for the period.

Mr. Collett: I might state to the Court that is a figure which we are not in any dispute about, the total purchases is \$203,208.51.

The Court: All right.

Q. Mr. Hedrick, was there subsequently some question, a mistake occurring in regard to the inventory that was taken as of November 1, 1942?

A. Yes, I used in my computations the inventory for the 2066 Fillmore Street instead of the inventory for 458 Geary Street.

Q. In your original computations?

A. In my original computations.

Q. And that was subsequently corrected, was it?

A. That's right.

Q. And did it result in a refund to the taxpayer?

A. It resulted in a decrease, at least of the amount of the assessment.

Q. Resulted in a decrease in the assessment. What did you next do with regard to the—— [199]

A. Inasmuch as we had the gross receipts and the purchases, to resolve those into proof gallons.

Q. How did you obtain the gross receipts?

A. From Mr. Maroosis' own records.

Q. From his records?

(Testimony of Raymond C. Hedrick.)

A. In the case of investigation concerning his purchases, we reduced each purchase to proof gallons. We divided the total dollars and cents value of purchases by the number of proof gallons purchased and arrived at an average cost per proof gallon. According to OPA and business procedure, the sales price was cost plus one-third, and we arrived at the selling price in that manner. That gave us our \$20.93 per proof gallon.

The Court: Let's see; sales one-third over——

The Witness: The purchase price plus one-third, Your Honor, was the selling price.

Q. Now, you have the figure, starting inventory, the total purchases from November 1st, 1942, to March 31, of 1944?      A. That's right.

Q. And you had the net sales for the same period. Now, how did you get the percentage figure that you used in order to determine the percentage of distilled spirits?

A. By adding the gross receipts figure from Mr. Maroosis in order to ascertain what his distilled spirits were. We asked him for the percentage of distilled spirits sales, total sales. Mr. Maroosis advised us, he told us it was first 66 per cent, [200] and then either at the same time or very shortly thereafter he said it should be 86 per cent.

Q. And do you remember when that conversation occurred?      A. No, sir.

Q. It was subsequent to May 2?

A. Yes, sir.

(Testimony of Raymond C. Hedrick.)

Q. Do you remember who was present?

A. No, sir, I do not, except that I was never in Mr. Maroosis' store alone unless it was possibly one time. All occasions I was accompanied by an inspector or another investigator.

Q. Do you remember where it occurred?

A. No, sir.

Q. Don't remember where it occurred. What did you ask Mr. Maroosis?

A. For the percentage of his distilled spirit sales, total sales.

Q. And what was his—entirely two different conversations, were they?      A. I can't recall that.

Q. Did he first tell you it was 66 per cent?

A. Yes, sir.

Q. And then when did he change it to 86?

A. Very shortly thereafter.

Q. What explanation did he give you?

A. I don't recall the conversation about it. [201]

Q. You don't recall?      A. No.

Q. You don't recall that he said anything why, as to why he changed it?

A. I think he said—I shouldn't say what I think.

Q. When did you first have any knowledge that the percentage might be anything different than 86 per cent?

A. As I recall, the first time that I was aware of that, that it was being considered, was when this claim was filed and I heard about it just about two weeks ago.

(Testimony of Raymond C. Hedrick.)

Mr. Grupp: Pardon me; did I understand correctly that the witness' answer was that not until he learned of the claim, which was two weeks ago?

The Witness: That's right.

Q. You state that is when you first knew that the intention was that 96.41 per cent should be used?

A. That is my recollection; yes, sir.

Q. If you, at the time of the taking of the May 2 inventory and the information that you had then as to the other—to the reliability of that inventory, in light of what you knew of the removal of the 200 cases of March 31, if you had known that there were 100 cases stored at 499 Haight Street, what effect would that have had upon your estimation of the inventory of April 1?

A. Well, if I had been given such information by Mr. Maroosis [202] and could have considered it accurate, it is possible that the floor stock tax investigation would have ended there, by including that merchandise in the inventory.

Q. You say that even though you knew the 200 cases had been removed?

A. No, sir. I said if I could have believed it that that was true, but from my personal observation I couldn't believe, if he had told me he had 100 cases I still couldn't believe it.

Q. In light of the information you did have, by reason of the information which has now been disclosed to you, or recently disclosed to you a week ago, that there was 100 cases at 499, that further

(Testimony of Raymond C. Hedrick.)

gives you basis for regarding the inventory of April 1 unsound; is that correct?      A. That's right.

Q. Would that make a further difference in your computations?

A. It would change them materially.

Q. And do you believe that a recapitulation of the assessment itself may result in a different conclusion, taking into consideration the 100 cases that wasn't accounted for?

A. It would make a difference, but I can't, from what little I have heard during this trial, I can't see where any computations can arrive at a reasonable figure.

Q. Explain that a little further, Mr. Hedrick; you mean, the second computation by virtue of the purchases and sales, that even that computation is in doubt and do not believe its [203] accuracy?

A. Yes.

Mr. Grupp: Just a minute, I object on the ground it is leading and suggestive.

The Court: Sustained. [204]

Q. Do you, from the records that have been introduced into evidence in this case, Mr. Hedrick, do you believe that it was possible to ascertain therefrom a true and correct inventory as of April 1, 1944?      A. I do not.

Q. You do not.

Mr. Collett: That is all.



(Testimony of Raymond C. Hedrick.)

Cross-Examination

By Mr. Grupp:

Q. Mr. Hedrick, handing you Defendant's Exhibit B, you read from one of the pages, page 4 of the second inventory. I think you referred to it as——

A. Yes.

Q. First, 67 cases of Three Rivers—you identified that by the numeral 3 and the letter R, which is under the brand name head, did you not?

A. That's right.

Q. You notice that under the proof that 86 per cent proof, is that correct?

A. Yes.

Q. Is there any way you can determine from that, determine what the 17 cases of 86 per cent proof was?

A. No, sir.

Q. There is none. It could be Three Rivers, couldn't it?

A. Yes. [205]

Q. And the 82 cases—no, that is 88 proof—the 51 cases immediately below the 82 cases on the same page——

The Court: 17 cases 86 per cent, or 88——

Mr. Grupp: 17 cases, 86 per cent, and then following the figure 82 cases of 88 proof.

Q. Now, under the 82 cases, there are 51 cases of 86 per cent proof. Now, is there any way to determine whether or not that was Three Rivers or not?

A. There is not.

Q. So that it could be Three Rivers as well as anything else, couldn't it?

A. That is a hard question for me to answer,

(Testimony of Raymond C. Hedrick.)

because I was present when the inventory was taken and we were interested in Three Rivers Whisky and we listed Three Rivers Whisky along with all the other items, only two brands listed, one is Three Rivers. Had there been more than that one entry for Three Rivers, it would have been so designated.

Q. Mr. Hedrick, I hand you Plaintiff's Exhibit No. 31. That is your receipt for it, signed by you to Mr. Maroosis on May 2, 1944. A. Yes, sir.

Q. Referring to the written language on that receipt, the words, and which said "231 serial numbers"; is that your writing? A. Yes, sir.

Q. And did Mr. Maroosis on May 4, 1944, hand you a list of [206] serial numbers such as attached to that receipt? A. Must have.

Q. Well, he did; there is no question about it, is there? A. No, sir.

Q. Mr. Hedrick, I call your attention to the second sheet of Plaintiff's Exhibit 31 which reads:

"Below listed as the serial numbers of 231 cases of Three Rivers Whisky found at 458 Geary Street on April 1, 1944."

Now, you had at the same time that this receipt was handed to you, the inventory that Mr. Maroosis took at the store on April 1, 1944, did you not?

A. Yes, sir.

Q. Now, did you note from that inventory that all there was listed in there was approximately 176 cases of Three Rivers Whisky at Geary Street?

A. 3256 would be 271 cases.

(Testimony of Raymond C. Hedrick.)

Q. That is in the recapitulation, is it not, Mr. Hedrick?

A. I did not have the inventory, the penciled inventory; I had the typed copy.

Q. Wasn't this inventory, the penciled inventory, shown you at any time?

A. I don't recall it.

Q. Did you ask for the penciled inventory?

A. I had no reason to ask whether that was the original inventory or a recapitulation of it. [207]

Q. What was the——

A. I don't recall that the penciled inventory was ever mentioned.

Q. Did Mr. Maroosis offer you the penciled inventory to check against yours?

A. Not that I recall.

Q. When you went to the basement of the Haight Street Store, just describe what is in that basement, please.

A. My recollection——

Mr. Collett: When, if the Court please?

Mr. Grupp: Well, he was there in May, as he says—He testified he was in the store several times, in the basement.

The Court: He testified he was in the basement once some time between May 2 and May 18.

Mr. Collett: All right.

A. I am not sure of my testimony; I was in the basement and looked—I don't believe I was in that basement. I could see down through the trap door and got partially in and looked around. Seeing

(Testimony of Raymond C. Hedrick.)

nothing, I came out, just saw some junk, I don't recall; I was looking for cases, cases of whisky, cases of liquor in the basement.

Q. I would like to have you describe the basement as you remember it. Were there four walls or anything else along the walls, were there shelves down there; anything of that nature?

Mr. Collett: I object to that—— [208]

A. I can't say.

The Court: Overruled.

The Witness: I can't say about that.

Q. Didn't you see, of course, an icebox down there? A. No, sir.

Q. Don't recall it. Now, Mr. Hedrick, weren't you advised that the whiskey was locked in the walk-in icebox, because it was separate and distinct lot of liquor from the Haight Street inventory?

A. No, sir; I was never advised there was any liquor in that basement until last week.

Q. Mr. Hedrick, didn't you read, or see the inventory of Haight Street, in a recapitulation of course, an inventory of the Haight Street?

A. I probably did. Other gentlemen made a floor stock tax investigation of those other two stores. I probably saw the inventory, but only the typed copy. I never saw any penciled inventory until at this hearing.

Q. Did you ever make a demand for them?

Mr. Collett: I object to that—— A. No.

The Court: Overruled.

(Testimony of Raymond C. Hedrick.)

Q. Mr. Hedrick, you have examined these inventories in Mr. Maroosis' office?

A. I looked at them; yes, sir. [209]

Q. It was pointed out to you, was it not, where the Haight Street inventory, the physical inventory, showed 100 cases of Three Rivers in the physical possession of the Haight Street Store?

A. I see the notation in the penciled inventory. It is written in a different pencil and handwriting from the original inventory.

Q. And did you see the hundred cases in the return to the Alcohol Tax Unit in addition to the penciled inventory of 176 cases at Geary Street?

A. No, sir.

Q. Well, you examined the penciled inventory?

A. No, sir.

Q. Up here in Mr. Maroosis' office, and that showed 176 cases of Three Rivers at Geary Street, didn't it?

A. I think the return showed it in bottles, the total of 171 cases.

Q. Well, whatever—— A. Yes.

Q. But the return that was filed by Mr. Maroosis showed that *there some* 276 cases on hand for which he paid tax, did it not?

A. That is right.

Mr. Collett: I object——

The Witness: 271, I believe.

Mr. Collett: One-half. [210]

Mr. Grupp: 271½; I will stand corrected.

Q. That is what it showed? A. Yes.

(Testimony of Raymond C. Hedrick.)

Q. It showed exactly 100 cases more on his return to the Alcohol Tax Unit than is actually reflected in the penciled inventory of April 1 taken of the Geary Street store.

A. I never saw the penciled inventory until this week.

Q. But even so, it still—that is still the fact?

A. When I was in the store on April 1st, I counted 178 full cases of Three Rivers Whiskey in the store plus three part cases. That brought the total up to 180.

Q. On April 1?

A. On April 1; Saturday, April 1. I so testified previously.

Q. Mr. Hedrick, do you recall a conversation with Mr. Collett and myself yesterday in which you stated that Mr. Maroosis, that you came into the store on April 1st, that the store was closed?

A. That's right.

Q. That Mr. Maroosis was there with his crew taking inventory; remember that?

A. That's right.

Q. That was a Saturday?                      A. That's right.

Q. The store wasn't open for business; do you remember that?                      A. That's right. [211]

Q. That you walked in and with two other men and that you were in that store for about five minutes; do you remember that?

A. Something like that time, yes, sir.

Q. And in that five minutes I understood you



(Testimony of Raymond C. Hedrick.)

stood there and counted 178 full cases of Three Rivers——

A. We made the count I just gave. It only takes a few moments to count a number of squares of cases and multiply and determine the total in the pile.

Q. Did I understand you correctly, Mr. Hedrick, that in all of the time that you said you followed this truck on this Saturday you could not identify what was actually in that big truck or in the little truck?

A. They had a floppy curtain over the back, you couldn't see exactly. The curtain blew, and they got out, the two drivers in the coupe got out and rearranged the load and pulled it, tightened it down tight, tied it down.

Q. Now, Mr. Hedrick, you say that you were interested only in Three Rivers on your spot check?

A. Primarily interested in Three Rivers.

Q. Why, then, when you went to the Haight Street store, did you count 36 cases of wine, 44 cases of wine, 3 cases of rum, and 3 cases of rum?

A. That was all there was there in case goods.

Q. And in the Geary Street store there was other case goods than Three Rivers? [212]

A. Yes, sir.

Q. But you weren't—— A. I listed them.

Q. You listed other cases, too? A. Yes, sir.

Q. As of April 1st? A. Yes, sir.

Q. May we have the notes that you have read from marked for identification? Did you make

(Testimony of Raymond C. Hedrick.)

those notes at the time that you followed that truck, Mr. Hedrick?

A. About the hours?

Q. Yes.           A. Yes, sir.

Q. All the notes that you have and from which you read while you were testifying, where they made at approximately the time the events related took place?

A. This actual piece of paper, this is coped from another record I did make at the time.

Q. Where is that other record?

A. It is in the notebook that is in my possession.

Q. Now, Mr. Hedrick, did I understand you correctly that the first time you were actually aware of Mr. Maroosis' claim that the figure of 86 per cent was wrong, even though he gave it to you, and that he actually—distilled spirits were 96.41 per cent, was two weeks ago? [213]

A. It is possible that that was told to me. I left the Alcohol Tax Unit shortly after May of 1944 and I have, with the exception of a short period, I have been on other work ever since. And I wasn't in the office and I don't know, I knew nothing of the majority of the correspondence that you have introduced concerning Mr. Maroosis' case and the audit made by the Andrews Company. I saw that only recently when I was called to participate in this trial.

Q. Now, Mr. Hedrick, going back now to your May 1st inventory when you checked that back as

(Testimony of Raymond C. Hedrick.)

against Mr. Maroosis' physical inventory, by considering purchases and sales between April 1 and May 2, or whenever that inventory was taken, you substantially verified Mr. Maroosis' inventory with the exception of that 108 proof gallons; is that correct?

A. It wasn't a very great difference; no, sir.

Q. So that the only question, as you here stated, was this 108 proof gallons which had been explained to you as representing 60 cases at Haight Street, would, in your opinion, have ended your investigation then and there; is that correct?

A. No, I don't believe that is correct, because this matter involved using Mr. Maroosis' total sales against the amounts that he should have received for his liquor as against the daily sales records, also bringing in some missing records, and the figures don't check out.

Q. Well, now, Mr. Hedrick, when you finally made the assessment [214] you relied on four basic figures, did you not? A. Yes.

Q. You relied on Mr. Maroosis' starting inventory as of November 1, 1944—1942? A. 1942.

Q. And you accepted Mr. Maroosis' records on that figure, did you not? A. That's right.

Q. You relied on Mr. Maroosis' gross purchases, on his purchases—total purchases?

A. I computed those for myself.

Q. All right. In relying on Mr. Maroosis' purchases, you verified his purchases through every wholesaler, did you not? A. That's right.

(Testimony of Raymond C. Hedrick.)

Q. And you came to a figure which was \$41 and some odd cents less than Mr. Maroosis'?

A. That's right.

Q. You could have missed one invoice very easily?

A. Could have, yes, sir.

Q. You verified Mr. Maroosis' purchase figure was substantially correct, wasn't it?

A. Yes, sir.

Q. On his books?

A. Yes, sir.

Q. You then accepted Mr. Maroosis' gross sales figure from his [215] books, didn't you?

A. Yes, sir.

Q. And you then accepted Mr. Maroosis' estimate of his proof gallonage sales of distilled spirits as against gross sales, didn't you?

A. Yes, sir.

Q. Now, if you had, at that time, been made aware of the state audit, of the 96.41 per cent, would you have used that audit in place of Mr. Maroosis' estimate or of the per cent sales here?

A. At the time the Board of Equalization audit was made, was a month or more later after my investigation was made, and at that time I probably would have taken the closing inventory as a beginning point and worked back to April 1st.

Q. You knew there was a closing inventory, then, didn't you?

A. No, sir, he sold the store just a few days after I completed my investigation.

Q. Mr. Hedrick, did I understand now correctly

(Testimony of Raymond C. Hedrick.)

that you would not have substituted the 96.41 per cent for the 86 figure if you had known of the state audit, in making your calculation?

A. If I had believed that the percentage should have been 96.41, with the information I had obtained through my investigation, I still wouldn't have used it, I wouldn't have considered it as a reliable basis for the assessment.

Q. Do you consider that the 86 was more reliable basis for the [216] assessment?

A. As related to the actual assessment; yes.

Q. Why do you think the 86, which is Mr. Maroosis' estimate, as against the actual accounting of the audit of the State Board of Equalization, which showed 96.41?

A. That brings in the information that I received during my investigation as already outlined. I had received information from a considerable number of bar owners and their associates that they had purchased whiskey from Mr. Maroosis for \$65 a case.

Mr. Grupp: We will object to that on the ground——

The Court: Overruled. You asked him why he would have accepted this as true.

Mr. Grupp: We object on the ground that it isn't responsive.

The Court: You say if he had known something, wouldn't he have accepted, and then you asked why he wouldn't and he has told you.

(Testimony of Raymond C. Hedrick.)

Mr. Grupp: I am referring to an accounting question.

The Court: Let me hear the question.

(Record read.)

The Court: Frequently on cross-examination a man hurts himself instead of helping.

Mr. Grupp: My question was directed to the acceptance—specifically to his accepting an estimate by the taxpayer as against an audit by a state bureau.

The Court: His previous answer, he didn't believe that was [217] reliable, and then you asked him why he wouldn't and he gave you the reason. It is hearsay, but you are searching into his mind—if he had known the 96 per cent that he would have accepted it, and he has told you that if he had known it he wouldn't have believed it by virtue of this investigation and this information. He says he saw some trucks. Under all the circumstances, if you are surprised, I will strike it.

Mr. Grupp: Yes, I would like to have it stricken.

Q. Mr. Hedrick, do you recall a conversation outside of the courtroom, which we had numerous conversations, you advising me that if you had known of this, existing of this state audit, that you would not have recommended the assessment?

A. No, sir. I wish to refer to the stipulation made concerning these percentages and the totals, in



(Testimony of Raymond C. Hedrick.)

that I asked you to include them before that if we accept the figure in the books as being correct for sales, it is my contention that the figure showing gross receipts for that store is incorrect, as representing sales in terms of selling prices for proof gallons——

Q. Now, Mr. Hedrick,——

A. I might add, in all our conversations, I have always maintained that if we accept the figure as correct for sales, and we have never done so.

Q. Mr. Hedrick, since two weeks ago you first learned of the state audit, have you in those two weeks checked that state audit to determine as a matter of bookkeeping why the state [218] audit is not correct?

A. That refers exactly right back to my last previous answer, if we assume that the receipts in the bank deposits of Mr. Maroosis are representative of distilled spirits sold, the selling price in the audit should be correct. And I would answer that I can not.

Q. All right. Mr. Hedrick, did I understand correctly now that even though, for the purposes of your assessment, the government assessment, that you recommend that you accept Mr. Maroosis' purchase figure and accepted his gross sales figures, that you now would not accept those same figures for the purpose of the state audit?

A. I don't know if I understand.

Q. If you don't understand the question——

(Testimony of Raymond C. Hedrick.)

The Court: I don't understand, the answer will be of no help to me.

Q. Mr. Hedrick, I understood the testimony of a moment ago to be that if you accepted the figures from Mr. Maroosis' books of gross purchases, of purchases and gross sales, that there is no question in your mind but that the state audit is correct?

A. I qualified my answer in this way. I have absolutely no question concerning the purchases; it is the sales that the—it is my contention that they do not represent sales of distilled spirits at ceiling prices.

Q. Mr. Hedrick, did you accept Mr. Maroosis' gross sale figure [219] as correct when you figured the assessment that was levied against him by the Government?

A. I wouldn't like to use correctly accepted, because there was no alternative.

Q. That is, you couldn't disprove it; is that what you mean?

A. That is a question that is a little bit hard to answer. No, I have no way of disproving the fact that he received the amount of money, 276 and something, and put that money in the bank. We accept that, that the money did go in the bank, but I do not accept that it represents merchandise sold at \$20.93 a proof gallon, which is the correct selling price.

Q. Mr. Hedrick, you stated \$20.93 as the correct basis for figuring the proof gallonage. Why did you

(Testimony of Raymond C. Hedrick.)

use the figure \$20.93 in figuring the proof gallonage against which you levy——

A. We had no other alternative, no other basis on which to make our computations.

Q. Well, then, your computations are not correct, are they, Mr. Hedrick, in your own opinion?

A. That involves a little bit more lengthy answer.

Q. Just a computation——

Mr. Collett: Let the witness answer the question.

A. (Continuing): The supervisor discussed with me on his——

The Court: You can take that out. You are to answer whether or not you consider your computations correct. You may say yes or no and give the explanation of why; don't bring in the [220] conversation of the supervisor.

The Witness: Mathematically the computations were correct.

Q. Well, but the basic figures you used, are they correct?

A. The \$20.93 represents the ceiling price for sale of the distilled spirits as purchased by Mr. Maroosis during this period. The \$276,000 represents his gross receipts per his books, with one exception, that sales figure in his books for March contains three erasures, or four erasures——

Q. That is what, please?

A. His ledger contains four erasures for the March entries, March 1944, and because of those erasures which were made before I examined the

(Testimony of Raymond C. Hedrick.)

books, it is difficult to ascertain whether those figures were the original figures or not.

Q. Did you check those figures against bank deposits for those respective dates those erasures appeared?

A. I don't deny they represent bank deposits, but the original figures are erased and substitution figures put in between, probably between the dates of April 1st and May 2nd.

Q. Mr. Hedrick, I would like to know on this basis which you figured Mr. Maroosis' inventory as of April 1st, 1943, having accepted—'44—and having accepted the basic four figures from his books, whether you now question those figures or any of them?

A. I think that computation is inaccurate.

Q. You think the computation is inaccurate?

A. That's right.

Q. And, Mr. Hedrick, would it follow as a matter of accounting that if the basic figures are incorrect that the result in which those basic figures are used, would be incorrect?

A. To that extent, yes.

Q. And incidentally, Mr. Hedrick, in your experience as investigator for the Alcohol Tax Unit and the Internal Revenue Department, can you tell us what records the average liquor dealer has, permanent records, which Mr. Maroosis does not keep in his bookkeeping system?

(Testimony of Raymond C. Hedrick.)

Mr. Collett: That is irrelevant.

The Court: Overruled. You may state his records appeared to be kept the same as the average liquor dealer records in and about San Francisco.

The Witness: I was getting crossed up. I have made a thorough investigation, or thorough investigation only of this particular liquor store. The other floor stock tax investigations that I made resulted in no complications that involved searching investigation. I am unprepared to state from experience such as you have mentioned whether his records are more or less complete than other stores.

Q. Mr. Hedrick, in calculating the proof gallonage in this store, you marked up the purchasing price, the sale price per proof gallon by  $33\frac{1}{3}$  per cent?

A. Marked the purchasing price  $33\frac{1}{3}$  to arrive at the sale [222] price.

Q. Yes, that would mean that you were figuring on a gross profit of 25 per cent; is that correct?

A. I couldn't state as to profit. I used what the Board of Equalization used.

Q. As a matter of accounting principle, if you marked it  $33\frac{1}{3}$  up from the purchasing price to the selling price, that constitutes a 25 per cent gross?

A. That would be 25 per cent of the selling price, of the gross profit.

Q. Now, did you check Mr. Maroosis' records to determine from his records whether the amount of purchases he made as against the amount of sales

(Testimony of Raymond C. Hedrick.)

would leave him an approximate 25 per cent gross profit?      A. I don't believe I did.

Q. Did you check his records to determine what gross profit he would have made if your assessment inventory figure of April 1st was accepted?

A. No, sir.

Q. Then you didn't recheck your figures in that manner at all, did you?      A. No, sir.

Q. Did you make any other check to determine the correctness of your estimated inventory as against your own physical inventory of May 2nd and against Mr. Maroosis' physical inventory of [223] April 1st, other than by using the 86 per cent of the gross sales as distilled spirit sales?

A. I don't think so.

Q. You made no other check other than the acceptance of that figure, did you—no other check than acceptance of that figure from Mr. Maroosis, 86 per cent?      A. No, I don't think we did.

Q. If that figure is incorrect or an improper estimate by Mr. Maroosis, then your assessment is to that extent in error; is that correct?

A. That's right.

Mr. Grupp: I have no further questions. Pardon me just a minute.

Q. Incidentally, did you make a determination of the proof gallons in the inventory of May 25, 1944?

A. No, I did not; Inspector Harer estimated that.

Q. Inspector Harer estimated that; do you know



(Testimony of Raymond C. Hedrick.)

what that estimate was?

A. 808.7 proof gallons.

The Court: Inventory of May 25——

Mr. Grupp: May 25.

The Court: Who had estimated that?

The Witness: Inspector Harer, sitting in the courtroom.

The Court: All right. Cross-examination is finished? Any redirect? [224]

Mr. Collett: Just a couple of questions, if Your Honor please.

#### Redirect Examination

By Mr. Collett:

Q. Mr. Hedrick, in reaching the price of 15,965, is that it —695, as the average price per proof gallon, how did you arrive at that figure in the process mathematically?

A. Every invoice that we——

The Court: Reach a price of 695——

Mr. Collett: No, 15.965 per proof gallon is an average price on which the one-third markup was made.

A. (Continuing): We listed every item of merchandise purchased in terms of the invoice, invoice numbers, wine gallons, proof and proof gallons, and totaled the proof gallons and used that as divisor for the cost price, we determined the average cost per proof gallon.

Q. Now, that was the average price that you reached depending upon——

(Testimony of Raymond C. Hedrick.)

The Court: Is there any substantial difference between the average cost of proof gallons?

Mr. Grupp: There is, Your Honor, but we are not—we never disputed that because——

The Court: No dispute here about that; in other words, I am not going to decide this case on a possible difference of proof gallons. It was not gone into on cross-examination. [225]

Mr. Collett: No, if Your Honor please, I was only going to reach one point that the determination of that proof gallonage was dependent upon the accuracy of the 26.9 net sales for the distilled spirits as related to the number of gallons actually sold. If you sell a case for \$65, it is entirely——

The Court: I agree to that, but there has, it has been agreed by this witness that as far as the purchasing price is concerned, the amount of the purchases, that he is satisfied he—there is no evidence that any sold at \$65 a gallon, or case. On motion I will strike the question as going to a minor point not in controversy and not taken up on cross-examination.

Q. Mr. Hedrick, if cases of whisky were sold in excess of the proper markup in accordance with the OPA ceilings, what effect would that have upon the figure that you concluded as the average price per proof gallon, 15,695, what effect would that have upon that computation?

Mr. Grupp: I will object, assuming something not in evidence, speculative——

The Court: Well, that would generally be true

(Testimony of Raymond C. Hedrick.)

but you entire examination of this witness, I think, makes it appropriate on redirect. You kept asking him why he didn't accept this and if he accepted it, if it wasn't so and why it wasn't so after he learned about the 96, why he didn't immediately—Objection overruled——

A. If I understand the question, the answer would be that [225-A] merchandise sold in excess of the ceiling price and the entire receipts deposited and considered as here included in the total sales divided by the proper selling price, the 20.95 would indicate more proof gallons of merchandise sold than would actually be the case.

Mr. Collett: No further questions.

### Recross-Examination

By Mr. Grupp:

Q. On that last question, Mr. Hedrick, in your experience as investigator of black market operations, wouldn't you say that the black marketer did not deposit any amount received by him over and above the ceiling price of merchandise sold by him as a general rule, to his bank account or reflect it in his books?

A. That is a question that I would be unable to answer, but if the Court wishes, I think——

The Court: He asked you.

Q. I asked——

The Witness: Specifically as you put it, because I don't know what the average black market man did. I had a theory in this case that—it is merely my

(Testimony of Raymond C. Hedrick.)

own theory that I could give the Court if he so desires.

Q. I am talking about the average man on the liquor to be sold on the black market. Didn't your investigation disclose that he doesn't deposit his black market money in the bank account or reflect the sales over the ceiling in his books; [226] that was the question.

A. I haven't had close enough contact with black market sellers to answer that question. I think that the majority of them did not include their black market profits as sales and put them in their books.

Mr. Grupp: That is all. [226-A]

The Court: All right, anything further? The defense then rests?

Mr. Collett: Call Mr. Harer.

### GEORGE HARER

called as a witness on behalf of the defendant, sworn.

The Clerk: Will you state your name to the Court, please?

A. George Harer.

### Direct Examination

By Mr. Collett:

Q. By whom are you employed, Mr. Harer?

A. I am an inspector in the Alcohol Tax Unit, U. S. Treasury Department.

Q. How long have you been such an inspector?

A. I was since April 26, 1941.

Q. When did you first become acquainted with

(Testimony of George Harer.)

the case at issue in this court against the plaintiff, Mr. Maroosis?

A. Well, that was, as I recall, it was in November 1945.

Q. And what did you do in participation of the investigation?

A. Well, the District Supervisor assigned me to reexamine the whole case after a claim for abatement of the assessment had been filed by Mr. Maroosis. And I had no previous connection with the case at all, knew nothing about it until I received this assignment. That was the reason it was given to me for an examination, was an open mind, no prejudice whatever.

Mr. Grupp: Your Honor,—

The Court: That is stricken as self-serving.

Q. (By Mr. Collett): Did you thereafter examine any of the books of Mr. Maroosis?

A. No, not at that inspection.

Q. Did you ever examine any of the books of Mr. Maroosis?

A. Yes, I did.

Q. When?

A. In January, 1949.

Q. Where?

A. At his present office, I think it's 774 Geary Street, Silver Rail, over the Silver Rail bar. I don't think Geary, I mean Market—

Q. What books did you see?

A. Well, I saw his ledger and I saw his daily sales records from the Joseph Street Store or Joseph Liquor Store, and some invoices for purchases for

(Testimony of George Harer.)

the period between November 1, 1942 and April 1, 1944.

Q. Did you have any difficulty obtaining his books?

A. Not at the second inspection that the claim for refund—Mr. Maroosis was very cooperative, At first he was a little bit inclined to——

Mr. Grupp: Well, of course, the answer at this point suggests it is going to be——

Mr. Collett: You may strike that.

Q. Did you see all of the books which are in evidence as [228] plaintiff's exhibits?

A. Yes, I believe I saw all those books.

Q. You saw all of those books. Were there any books that are not in evidence that you did see?

A. Yes, I believe there is some books that are not in evidence that I didn't see.

The Court: Do you believe there is some evidence that you didn't see?

The Witness: I know there are some books in evidence that I did see.

The Court: All right.

Q. (By Mr. Collett): And what books that are not in evidence did you see?

Mr. Grupp: I made a statement to the court originally that I would stipulate.

The Court: That he saw the daily records sheets for January to September, inclusive, of 1943, and the month of December, 1943.

Mr. Collett: I don't think the month of December. I think he said that was March.



(Testimony of George Harer.)

The Court: Let him state it.

Q. (By Mr. Collett): Did you see the daily sales book for the month of December, 1943?

A. Yes.

Q. And in that daily sales book for the month of December did [229] you see the individual entries that were in that book? A. Yes, I did.

The Court: There was an interruption. I am interested in whether he saw the daily sales record for January to September, inclusive, of 1943?

The Witness: I can't say that I saw all of those records.

The Court: Did you see any of them?

The Witness: Yes, I did.

The Court: All right.

Q. (By Mr. Collett): Did you see any notations of sales on that daily sales book for December, 1943, recording the sale of whiskey in excess of ceiling prices?

A. Well, I can't specifically state that it was December. When did you say that it was—the first—the last quarter of October, November, or December, because I examined those in detail.

Q. Have you examined the two books that are in evidence for October and November?

A. Yes.

Q. 1943. A. I have.

Q. Did you finally find any record in those two books of any sales in excess of the ceiling prices?

A. Well, I don't believe so, because I don't know the ceiling prices for all the whiskey, but they do not appear to be [229] excessive.

(Testimony of George Harer.)

Q. What notations did you find in the records, did you find in the record book that you stated were in excess of ceiling prices?

Mr. Grupp: Pardon me just a minute. I understood there was going to be offered here, your Honor, a transcript of notes of Mr. Harer that he took at that time. Now, if he is testifying from his memory, why, that is one thing, and if he has those notations, I would like to see them.

The Court: Do you have any notations?

Q. (By Mr. Collett): Do you have any notations? A. I have no notations.

Q. Did you make notations? A. I did.

Q. What happened to the notations?

A. I am unable to locate them.

Q. When did you see them last?

A. Well, I can't state definitely. I would say six months ago is the last time I noticed them.

Q. Do you recall when you last saw them?

The Court: Well, he said about six months ago. You may proceed.

Q. (By Mr. Collett): What is your recollection as to sales that were made in daily sales book that you have testified to having seen in excess of ceiling prices? [231]

A. I saw several notations there ranging from 35 cases in a lot to a hundred cases in a lot and some of this I recall as Ram'shead whiskey.

The Court: Some what?

The Witness: Some was Ram'shead whiskey and the sales prices for that ranged from \$57 to \$65 a case.

(Testimony of George Harer.)

Q. (By Mr. Collett): Do you know what the cost of Ram'shead whiskey was during the third quarter of 1943?

A. Yes, I do, I think that the——

Mr. Grupp: Just a minute. The question if he knows the ceiling price, we will object to that.

Q. (By Mr. Collett): Do you know what the cost of Ram'shead whiskey was per case in the third quarter of, or fourth quarter of 1943; that was the question.

A. I don't believe I understand. The cost to whom?

Q. The cost to the retailer from the wholesaler.

A. It was \$29.79, if I recall correctly.

Q. And how many entries did you see in that book that you recall pertaining to Ram'shead whiskey?

Mr. Grupp: We object to that, your Honor, on the ground if they were sold according to the records then they certainly weren't on hand on April 1 and Ram'shead whiskey has never been a question here.

The Court: Overruled. There is evidence in this case indicating that there was surreptitious dealing by the [232] plaintiff and this would go to that issue.

Mr. Grupp: We will object on the ground that it isn't the best evidence.

The Court: Overruled. It is the best evidence available under the evidence. You may proceed.

(Testimony of George Harer.)

Q. (By Mr. Collett): You may answer.

A. Well, I couldn't state definitely how many I saw. I do not recall. There were numerous entries, I would say a minimum of five. I am stating it very much as a minimum, because I am positive it was more than that.

Q. And of those five entries that you recall, how many cases were involved?

A. Well, as I recall the major portion of these entries, 100 cases to the lot, even 100 cases, and I would say it was approximately 450—435 cases in that quantity.

Mr. Collett: That is all.

#### Cross-Examination

By Mr. Grupp:

Q. Mr. Harer, do you recall a conference in Mr. Collett's office, I think it was day before yesterday, in which all of us here, Mr. Collett, Mr. Hedrick, Mr. Maroosis, Mr. Bruch, Mr. Schiller and myself and the gentlemen sitting in the back here were present? Do you remember our meeting in Mr. Collett's office? A. Yes, I do, sir.

Q. Do you recall at that time requesting that you be permitted to examine plaintiff's exhibit No. 17, which had been withdrawn from the court by both counsel, borrowed rather, during that recess, and advising us that you wanted to compare the notes that you made from records which were miss-

(Testimony of George Harer.)

ing to determine whether those notations were in plaintiff's exhibit 17?

A. No, I don't recall that. I recall—shall I state what I recall?

Q. Just one moment. Yes, go ahead.

A. What I recall is that I wished to examine those records in—exhibit 17, and at that time I believe you asked me if I had made some notes and I told you at that time that I had those notes but I did not say that I was going to compare those notes with the record.

Q. In other words, you said you did, physically you had made some notes?

A. That's right.

Q. Of the missing records?

A. That is true.

Q. And I advised you at that time, did I not, Mr. Harer, we would be willing in view of the fact that those records were missing now to permit you to introduce those records in evidence as you stated that you made them from Mr. Maroosis' original books, didn't I?

A. That is true.

Q. You didn't at that time state you had no such records, did [234] you?

A. That is true.

Q. And however, we did, all of us, depart from Mr. Collett's office leaving you with plaintiff's exhibit 17 and other records that are here in court in evidence, some of which were not introduced in evidence, as a matter of fact, and I am sure plaintiff's exhibit 17 was not then introduced into evi-

(Testimony of George Harer.)

dence yet; we left those with you and Mr. Bruch remained behind with you to permit you to make such comparison as you wanted to make, is that correct?      A. That is correct.

Q. Now, Mr. Harer, what was the ceiling price of Ram'shead whiskey?

A. Ceiling prices?

Q. Yes.      A. When?

Q. In December of 1943.      A. I don't know.

Mr. Grupp: That is all.

Mr. Collett: No questions.

The Court: All right, you may step down. Any further evidence from the government?

Mr. Collett: No further questions.

The Court: The defendant rests?

Mr. Collett: The defendant rests. [235]

Mr. Grupp: Plaintiff rests.

The Court: All right, gentlemen.

#### Certificate of Reporter

I (We,) Official Reporter(s) and Official Reporter(s) pro tem, certify that the foregoing transcript of 235 pages is a true and correct transcript of the matter therein contained as reported by me (us) and thereafter reduced to typewriting, to the best of my (our) ability.

/s/ KENNETH J. PECK

/s/ RUSSELL D. NORTON

[Endorsed]: Filed March 29, 1950.



In the Southern Division of the United States District Court for the Northern District of California

No. 28965-R

Before: Hon. Lloyd L. Black,  
Judge.

NICK W. MAROOSIS,

Plaintiff,

vs.

JAMES G. SMYTH, United States Collector of  
Internal Revenue for the First Collection District of California,

Defendant.

## PARTIAL REPORTER'S TRANSCRIPT

Saturday, November 19, 1949

Appearances:

For the United States:

C. ELMER COLLETT, ESQ.

For the Plaintiff:

MORRIS M. GRUPP, ESQ.

The Court: There are many interesting factors in this. But I will make a preliminary statement. This is not a ruling, and will not bind me. I will not be embarrassed by statements today as to what I

am inclined to think is the law if I later change my view. But preliminarily, I am considering this matter from the basis that the law is as follows:

That the burden is upon the plaintiff to show that the Government's assessment was wrong as far as the primary assessment is concerned, and if the Court, when it is through analyzing the evidence, is unable to say whether the Government is right or wrong—in other words, the Court, if his mind is balanced or confused, the Court should deny recovery as to the primary assessment.

I am assuming that the law as to the fraudulent assessment is that the evidence must be clear and convincing the taxpayer was intentionally guilty of fraud, and that the Government has the burden of so establishing or that at least the evidence, by its preponderance, must so establish to a clear and convincing degree.

No, I am assuming that the law is essentially as I have stated it. You counsel, having heard that, will know how much or how little education I need as to the law.

Now, I may say as to the facts, gentlemen, that I do not feel the preponderance of the evidence favors the plaintiff as to the primary assessment. In other words, if I am compelled to decide the case now as to the primary assessment, I would have no question; I would decide against the plaintiff. The evidence satisfies me that during some of the period before April 1, 1944, that the plaintiff and his agents were surreptitiously and corruptly dealing with distilled spirits.

Now, you can start from there. The question is—the issue then is whether or not there is clear and convincing evidence of fraud. I have no confidence in the inventory of the plaintiff as of April 1, 1944. I am satisfied that the plaintiff did not intend to deal fairly with the State Board of Equalization. He turned in a figure of about \$60,000, and there isn't a scintilla of evidence to explain why he didn't turn in about \$90,000 to the State Board. He says his bookkeeping system was the finest system in San Francisco, apparently took only a few moments to learn what his gross sales were for each month, and I am satisfied that he intended not to deal fairly with the State Board.

When he found that the State Board had ascertained the correct sales and they had used a figure of 96% he says he had a check made. That check was wholly inaccurate. He had a check made showing some \$35,000 in sales. He left out \$52,000. I can understand how he might report \$80,000 and leave out 10,000. It would be hard to understand how he would 50,000 and leave out 35,000. But it is almost incomprehensible to understand how he would report, how he would have a check made of 35,000 and leave out 52,000 in ascertaining whether or not the State was right.

Now, his check wasn't a check made to determine whether the State was right or not. His check was made for the purpose of being able to convince the State, or somebody, that 96% was nearer right than about 99%. If his figures are accurate as to the balance \$52,000 having been whisky sales then in-

stead of having paid the State on the basis of 96% he should have paid the State on the basis of about 99%. I don't know how much difference that would have been, but he didn't deal fairly with the State before they made their audit. He didn't deal fairly with the State after they made it, and he did not deal fairly with the State after the payment. I am satisfied with those things.

As to exhibit 28, is it? The \$35,000 tabulation by Mrs. Woodward is only a partial tabulation, and left out the essential portion of what he says were the sales. There has been no explanation or excuse for leaving it out. I recognize there was a sheet that has all of it. But all that sheet shows that No. 28 wasn't a fair check.

So you may go further and assume in presentation of this case that I do not have confidence in the good intent of the plaintiff.

It would be extremely difficult to cause me to enter judgment for the primary amount.

There are some issues as to the fraud assessment requiring thought. If you gentlemen wish to speedily file written memoranda, you may do so. I have listened to the evidence and the manner in which it was given and I am satisfied Mr. Hedrick told the truth completely and entirely to the best of his ability. I am satisfied that plaintiff told the truth as a witness in so far as he felt there was no other option. I am speaking plainly, no reason to dodge or evade issues here. It is a question of fraud, question of reliance on testimony. I believe Mr. Hedrick.

Mr. Grupp: Might I ask a question, Your Honor?

The Court: Yes.

Mr. Grupp: Your Honor's statement with reference to the report of 66,000 the State Board was 60,000 total figure you used——

The Court: Yes.

Mr. Grupp: Did Your Honor take into consideration the testimony of Mr. Maroosis that up until the audit of May 25 by the State Board, which is a closing audit, to check back to determine all of these matters, that they had theretofore made returns to the State on the basis of a 66 to 86%?

The Court: I recognize that. If you take 66 to 86%, the last one I think was 86, take 86% from \$90,000; it doesn't make \$60,000; 66 to 86, or an average of 76% of \$90,000, it doesn't make 60,000. I had that in mind. I am satisfied that the plaintiff wasn't endeavoring to deal fairly with the State of California. That is not before me. His dealing with the State of California is not *res judicata* to me here. From the evidence I am satisfied that the State Board of Equalization, if it arrived at an accurate figure, did it under difficulties.

It seems to me the sole issue in this case is whether under all the evidence there is clear and convincing fraud as to the inventory on April 1, 1944.

Now, if you gentlemen disagree with the law as I have briefly stated it, I will let you present written briefs speedily and I will investigate. I am satisfied neither of you will disagree to the law as

stated as to the primary assessment that the burden is on plaintiff.

Mr. Grupp: Yes, Your Honor, but I do think the law establishes there must be a rational basis for the additional assessment by the State, by the Federal Government.

The Court: I agree there must be a rational basis which rational basis must be arrived at by common sense which means the most rational basis which is available under the circumstances. Now, one of the circumstances was that on March 31 Mr. Hedrick witnessed the most marvelous transactions.

Either side wish to make argument?

Mr. Grupp: I prefer not to do it orally.

The Court: Would you like to make it in writing?

Mr. Grupp: Yes. I am going to try—might I have ten days?

The Court: No, Gentlemen, I'm leaving here at least by the 3rd of December. When I return, I return to a heavy calendar. I came down here at a very substantial sacrifice. The business in the State of Washington is much too heavy for us judges to handle. In spite of that fact, I came because—you may put this off the record.

(Off the record discussion.)

The Court: We are on the record. Plaintiff's counsel has now asked until next Friday in which to submit a written argument. He has advised the Court he doesn't care to make oral argument. The Court will give the plaintiff until next Friday, the



25th of this month, at noon, in which to serve and file written argument.

The Court will give to the defendant until and including Monday evening at 4 o'clock in which to serve and file answering argument. The Court will give the plaintiff until Tuesday the 29th, at 4 o'clock p.m., to serve and file reply. I recognize I am giving the defendant a short period, but I have given to the defendant the benefit of most of the Court's inclinations which should permit the defendant to start in preparing such law as is essential to go on from there.

Going to speak off the record for a moment, may I?

(Off the record discussion.)

The Court: On the record. The Court wishes to say that the Court has full confidence in the sincerity of Mr. Bruch. I am satisfied that his testimony was in accordance with his honest views and opinions. That doesn't necessarily mean that I am in accord with all of his conclusions. But I am sure that he testified fairly, conscientiously and to the best of his belief.

One of the reasons that I am not willing to say I am in accord with his views is that it is hard for me to accept as good bookkeeping practice meticulous itemizations of \$35,000 in sales and broad lumping of \$52,000 in sales over a given period.

But I have no quarrel with Mr. Bruch's sincerity and he is entitled to have that said by virtue of the other statement.

The times I fixed for these written arguments are rigid. I want to be able to announce, which I expect to do orally, my conclusion before I leave for parts north. I expect it to be oral although aspects of this case justify a written opinion.

As I said in the beginning, I came down here with all the work I could do, hoping to be of help to the overburdened judges of this district by reason of situations in no wise chargeable to them. It is regrettable indeed that San Francisco does not now have appointed and actually on duty, subject to reasonable vacations, the seven judges that the law authorizes.

This Court will be adjourned until 9:15 Monday morning.

#### Certificate of Reporter

I (We,) Official Reporter(s) and Official Reporter(s) pro tem, certify that the foregoing transcript of 8 pages is a true and correct transcript of the matter therein contained as reported by me (us) and thereafter reduced to typewriting, to the best of my (our) ability.

/s/ RUSSELL D. NORTON.

[Endorsed]: Filed February 13, 1950.

In the Southern Division of the United States  
District Court for the Northern District of  
California

No. 28965-R

Before: Hon. Lloyd L. Black,  
Judge.

NICK W. MAROOSIS,

Plaintiff,

vs.

JAMES G. SMYTH, United States Collector of  
Internal Revenue for the First Collection Dis-  
trict of California,

Defendant.

PARTIAL REPORTER'S TRANSCRIPT

Thursday, December 1, 1949

Appearances:

For the United States:

C. ELMER COLLETT, ESQ.

For the Plaintiff:

MORRIS M. GRUPP, ESQ.

The Clerk: Maroosis vs. Smyth, for submission  
and motion to reopen.

Mr. Grupp: I don't know whether Your Honor  
has read the affidavit.

The Court: I have read the affidavit, I have read all the memoranda submitted and I have spent a good deal of time in examination of the voluminous exhibits.

Mr. Grupp: Our motion, Your Honor, is primarily made for the purpose of disclosing to the Court the investigation allegedly made by the Alcohol Tax Unit and the fact that the entire story of that investigation was for some reason or other not placed before the Court at the time. In other words, as I understood Mr. Hedrick's testimony, they followed a truck out to this address on San Bruno Avenue——

The Court: Counsel, you are making a motion for reopening of the case and submitted the affidavit of David Dellari. Does the Government have any objection?

Mr. Collett: If the Court please, it is wholly incompetent, irrelevant and immaterial, as to the issues of this case. As to the affidavit of Mr. Dellari being submitted at this particular time I don't see it provides any single thing to this Court.

The Court: I will say this: That the affidavit of David Dellari will be considered as part of the evidence in this case.

Mr. Collett: Yes.

The Court: Exhibit 11, which was offered and identified concerning which I reserved ruling, being an inventory as of May—as of a date in May, 1944—in connection with the sale of the Geary Street Store to DiMaggio is admitted and it is

assumed that David Dellari has testified as set forth in his affidavit.

The matters involved in this proceeding justify a much more formal opinion than the one I am about to give. While the expression of my reason for the ruling may not be as apt as it would if put in writing, my understanding of the facts themselves is probably better now than it would be later.

Other judicial obligations of mine apart from those in connection with this assignment for the Northern District of California would make it very difficult for me to write an opinion for a considerable period.

As I see it, the issues involved in this case are substantially issues of fact. The parties seem to agree, first, that as to the main assessment made by the Collector above that reported by the taxpayer and which the taxpayer paid under the law, the burden is upon the taxpayer to show by the preponderance of the evidence that he is entitled to recover back what was paid.

The parties similarly seem to agree as to the fraud assessment that even though such was paid, that the burden, nevertheless, is still upon the Collector to establish by clear and convincing evidence that there was a wilfull fraud on the part of the taxpayer.

I have re-examined the copious notes which I took during the trial; I have analyzed the exhibits in the light of those notes; I have seriously considered

various arguments presented by counsel. As a matter of fact, I am convinced that in any event the declaration or listing or report of the taxpayer as of April 1, 1944, did not include at least approximately 200 cases of Three Rivers whisky. I am not in a position to say how much more of distilled spirits the taxpayer failed to disclose. I am convinced that the report he made was not correct and that he knew it was not correct.

The accounting system for the Geary Street Store for the period prior to April 1, 1944, was a surprising system to me. I have heard evidence that the system was in accord with good bookkeeping practices; I have given heed to the repeated argument there has been no evidence presented that other liquor stores had a better system. But I am aware first that accountants who look at records have the same attitude towards the records that the ordinary physician has towards the history of an accident given to him by a patient. The physician assumes that the history is true and correct. Ordinarily, the history is reasonably correct, subject to the ordinary, casual human frailties, where the patient has no incentive to give an untrue history. Whenever the patient has a motive for stating a history that is not in accord with the facts, the physician who relies upon the history in good faith is certainly relying on something untrue. The accountant usually accepts what are known as the permanent records as correct. And in this case the accountant of Plaintiff said he relied upon the permanent rec-



ords as correct. He made no check or analysis as to the correctness of the temporary records which were the basis of the permanent records. At least, certainly he made no such check or analysis of the temporary records, which would be foundations as would cope with the motive or incentive of the taxpayer to misrepresent the situation.

If the liquor stores generally have a system where they meticulously itemize \$200 worth of sales on a certain day, as Mr. Maroosis said were done in his store, and then lump \$2300 worth of sales with no itemization, then all of the liquor stores need drastic and radical revision of their accounting systems. I am startled by the suggestion that particulars as to \$200 or \$300 of sales, plus lumping of \$2,000 worth of sales is good accounting practice. It may be that such does not violate accounting procedure so far as it may be essential to let the taxpayer learn whether he is making money or sustaining losses, but certainly such an accounting system is of no help to a Court in learning what actually transpired.

But regardless of the accounting system, regardless of the percentage figure that should, as a synthetic proposition, be employed in an estimate, the overwhelming evidence is at least 200 cases of whisky were shunted somewhere other than to any of the three stores in which Mr. Maroosis was interested.

There is no suggestion of what actually was done with any of those 200 cases taken from the ware-

house in the afternoon of March 31, except that a few cases were most irregularly handled on the street on the evening of the 31st when they were taken from a truck to several automobiles. Whether such were black market sales or whether such transfers were for the purpose of adding to some separate stores of whisky, I do not know.

But under the evidence of the plaintiff in this case, the 100 cases of Three Rivers Whiskey, which he claims were at the Haight Street Store on April 1, were put there either on March 29th or by March 30th, so none of those 100 cases are part of the mysterious 200 cases that went hither and yon on the afternoon and evening of March 31.

I am not overlooking the affidavit of Mr. Dellari and I am assuming that the affidavit is true. In other words, he has no knowledge that any whisky was stored in his garage. His affidavit would indicate that no whisky was stored in his garage, but there isn't a syllable of evidence to the effect that the black truck didn't enter the garage and linger there until the danger of pursuit was over and didn't then travel hence to a selected storing place. As a matter of fact, the evidence, the affidavit, of Mr. Dellari is quite corroborative of Mr. Hedrick's testimony. Unless Mr. Hedrick had seen this truck go to this garage, it isn't at all understandable as to why on April 1 Mr. Dellari would be approached and the garage would be searched.

The argument of plaintiff is largely based upon the theory that the only whisky that was ever sold was Three Rivers Whisky. The evidence of the

plaintiff and the argument of his counsel suggests that whenever there was a large amount of sales on a particular day that the excess of the total over the small amount of itemized sale was Three Rivers Whisky. I have no reason to so believe.

Exhibit 28 is a very interesting exhibit. Someone went to the trouble of analyzing whisky sales to the extent of \$24,000 in the three months' period, although actually and unquestionably there had been at least \$76,000 worth of whisky sales in that three months' period. But of the \$24,000 of whisky sales analyzed, I find probably forty or fifty brands listed and of those brands, Rams Head were listed as having been sold to the extent of \$7,865.65, Silver Moon \$6,330, Three Rivers \$3,987. Therefore, Three Rivers Whisky in that three-month period was running third. The record of sales after April 1 indicates that there was a very active operation, as I remember, in Rock Creek. There is an indication that Rams Head whisky was sold, not at one-third mark-up, but at 100% mark-up in the month of December, 1943; that allowed many cases of Rams Head Whisky to be available for sale in the period preceding April 1, and permitted Three Rivers Whisky to be shunted elsewhere.

The testimony of Mr. Maroosis, relative to Exhibit 28, when given, certainly lead me to believe that this analysis by the accountant was an analysis of all of the sales for the period covered. I referred to my notes and I find that they seemed to verify the impression I had when he was giving the testi-

mony. But even if I assume that there was no intention on his part to make it seem that the \$35,000 total covered all the sales of that period, I am wholly unable to harmonize his testimony with fair dealing with the State. The contention is made to me that he turned in \$60,000 to the State as his whisky sales upon the assumption that his whisky sales were only two-thirds of his gross sales.

Casually, such fractions of two-thirds might seem to explain the grave mistake he made. But his distilled spirits sales, instead of being about \$60,000 as he reported to the State were approaching \$90,000. He must have known the unitemized \$52,000 of those gross sales were distilled spirit sales only because he says that those figures were made up of whisky sales, each one so large that his adding machine didn't have room to accommodate such. I can see where a man would make a mistake as to his beer sales, over a three months' period of about \$100, or about \$150 or \$200. But it is hard for me to understand how a man would overlook \$52,000 of straight liquor sales. And if he thought only two-thirds of \$35,000 was distilled spirits, that would give him \$24,000 plus the \$52,000 would make \$76,000.00. But actually his non-distilled spirit sales were so far away from  $33\frac{1}{3}$  per cent as to lend no credence to any contention he, in good faith, estimated such as  $33\frac{1}{3}$  per cent. According to the figures I have for that period, the sales of other than distilled spirits were only about 2 or 3 per cent of the gross. It is easy for someone to slightly overestimate or underestimate the business he is

doing. But  $33\frac{1}{3}$  per cent was multiplying his non-distilled spirit sales by ten or fifteen. I am told that although he had about \$2,000 worth of such sales that were non-distilled spirits that he in good faith thought he had about \$30,000 worth.

The issue here is a question of fact and the question of the credibility to be allowed to various witnesses. I have no confidence in the testimony that Mr. Maroosis gave me. I only believe such as would appear had he not testified. He has said there were 100 cases of Three Rivers whisky at the Haight Street Store on April 1. He is bound by that. No portion of that 100 cases came from the 200 cases which Mr. Hedrick followed. Mr. Hedrick was well-justified using the figure 86%. That is a figure that confessedly the plaintiff told him. Actually, Mr. Maroosis probably told him in the beginning it was about 66% or two-thirds, but later he told Mr. Hedrick that his distilled spirit sales were about 86% of his gross sales. It is reasonable for Mr. Hedrick to accept that figure. Accepting that he found that there was a substantial shortage of about 1200 proof gallons. That shortage corroborated what he himself had seen. And from his personal experience he practically was compelled to know that the inventory in the store itself would not be correct on April 1st, because he knew that goods came and went somewhere, came from the warehouse and while stopping at the Fillmore Store rather than unloading, had added to the load probably enough cases to take care of what had been irregularly handled out on Geary Street.



It is difficult for me to see how the plaintiff can contend the 86% is unreasonable when he was the one that gave the figure. In using the figure 86%, Mr. Hedrick inclined as strongly as he could toward the plaintiff. Had he used 66%, the shortage would have been tremendously greater.

I recognize that the State Board assessed a certain tax and found no fraud against the plaintiff. That does not indicate to me at all that the State Board was correct. The State Board did not know about these interesting travels of the truck. In my mind, Mr. Maroosis was just more fortunate with the State than the evidence indicates to me he deserved.

I have confidence in the testimony of Mr. Hedrick. I am satisfied that his testimony is substantially correct. I am satisfied that the testimony of Mr. Harer is substantially correct; I am further satisfied that neither of them made any error except a sincere error of recollection. I am not able to say at all that the evidence disproves the assessment made by the collector. My suspicion is that in so far as the estimated shortage, on Mr. Maroosis' part in his declaration, of 1200 proof gallons was mistaken, there is at least as much reason to believe that that figure was too low, as that it was too high. I was interested in the argument made that sales of liquor, of selling prices, was irrelevant to the issue, but it cannot be gainsaid that if liquor had to be sold at \$40 a case to comply with the selling provisions and if it were sold at \$80 a case,



that for each such sale the seller would have an extra case to handle at his will without accounting.

I take it Mr. Dellari told the truth and I accepted as such his statement to the effect that he did not know any whisky was stored, and his statement further to the effect Frank O'Conner denied that he knew that any was there. But there is no reason I should believe Frank O'Conner's denial other than he denied it. But it can well be that Frank O'Conner did not know of the black truck in the San Bruno Street Garage. There are many people who knew about the traveling of this truck and where it went and none of them were offered. Plaintiff's brief does correctly say when one should offer evidence and doesn't, that it is to be reasonably presumed the evidence, if offered, would contradict rather than support the theory of that side.

Someone who drove a coupe. There were two in the truck. There was someone at the Fillmore Street Store, someone at the Standard Garage, as I remember the case. The Plaintiff must know who they were. They are not offered.

Since under the evidence the plaintiff intentionally, knowingly and deliberately hid approximately 200 cases and did not list them for the floor tax, as required, such concealment was wilful. Therefore, he is subject to the penalty.

I am sorry that I have been compelled to speak frankly in this case. But the sudden increase of sales from an average of somewhere around \$10,000 to \$12,000 more than the \$62,000 in December, 1943,

and to an average of about \$30,000 after the holidays—January, February, March of 1944, would suggest at least the explanation. The suggested explanation is that until about November, 1943, the business was conducted in accordance with the O.P.A. ceiling prices, as well as other requirements. There is at least a suspicion—it isn't necessary to the decision—that about the 1st of December, 1943, Mr. Maroosis succumbed to the temptation that overwhelmed many others than him. The records would support the theory that he did not itemize the whisky sales so that his bank accounts even if correctly kept, would not disclose how many cases were sold. Some individuals might have tried the contrary expedient of listing correctly the sales and concealing a portion of the price. And, of course, an individual could have used both.

It is not obligatory on me to decide actually whether there was or was not an excursion into the black market field. In any event, unquestionably at least 200 cases of whisky were taken out of the warehouse on March 31 and were not put in any of the three places where Mr. Maroosis claimed he kept all of his goods. The fact that none of such 200 cases were listed, destroyed the reliability of his inventory, his records and his claim of good faith.

The action is dismissed.

The Court would be remiss if it did not acknowledge much appreciation of the careful presentation by counsel on each side during the trial and afterward. I am satisfied that plaintiff's counsel and

the defendant's counsel were each at all times in entire good faith in this matter. And I am satisfied that plaintiff's counsel thinks I am completely mistaken. But necessarily, although unconsciously, he is a partisan.

I approached this case and continued during the trial with the idea that there would be no proof of bad faith and that the Court would be compelled to order repaid the penalty for fraud. I felt that the problem would be whether or not the Government was entitled to use 86% or whether it should have employed 96%. But although for a long time in the position of feeling that the defendant had a substantial burden, I was compelled by the later disclosures to conclude as I have announced.

Thank you, gentlemen.

I have been hoping to leave here for the north on Saturday of this week. I'm in a trial whose ending is uncertain. I may even be here next Monday, but in so far as counsel can agree as to submission of any documents for me for signature, I would hope that such could be submitted to me tomorrow, or mailed.

Mr. Collett: Does the Court wish the preparation of any findings of fact? I think under the Rule that the Court's opinion can stand as the findings of the Court.

The Court: I appreciate findings. You need not make them long.

Certificate of Reporter

I (We), Official Reporter(s) and Official Reporter(s) pro tem, certify that the foregoing transcript of 14 pages is a true and correct transcript of the matter therein contained as reported by me (us) and thereafter reduced to typewriting, to the best of my (our) ability.

/s/ RUSSELL D. NORTON.

[Endorsed]: Filed March 29, 1950.

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[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO RECORD  
ON APPEAL

I, C. W. Calbreath, Clerk of the District Court of the United States for the Northern District of California, do hereby certify that the foregoing and accompanying documents and exhibits, listed below, are the originals filed in this Court, or a true and correct copy of an order entered on the minutes of this Court, in the above-entitled case, and that they constitute the Record on Appeal herein, as designated by the attorney for the appellant, to wit:

Complaint to Recover Liquor Floor Taxes Illegally Collected.

Answer.

Stipulation Waiving Jury Trial.

Notice of Motion and Motion for Reopening Case.

Affidavit of David Dellari—in support of Motion to Reopen.

Stipulation.

Minute Order of December 1, 1949. Order Denying Motion to Reopen. Order Judgment Be Entered in Favor of Defendant. Order Dismissing Complaint.

Plaintiff's Objections to Defendant's Finding of Fact and Conclusions of Law.

Proposed Findings of Fact and Conclusions of Law—by Plaintiff.

Proposed Findings of Fact and Conclusions of Law—by Defendant.

Findings of Fact and Conclusions of Law.

Order Overruling Plaintiff's Objections to Findings of Fact and Conclusions of Law Made and Entered by the Court.

Judgment.

Memorandum of Costs and Disbursements.

Notice of Appeal to Circuit Court of Appeals.

Designation of Contents of Record on Appeal.

Plaintiff's Exhibits Nos. 1, 2, 3, 4, 5, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31.

Defendant's Exhibits Nos. A and B.

Reporter's Transcript for November 16, 17, 18, 19, 1949.

Partial Reporter's Transcript for November 19, 1949.

Partial Reporter's Transcript for December 1, 1949.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court, this 28th day of April, A.D. 1950.

C. W. CALBREATH,  
Clerk.

[Seal] By /s/ M. E. VAN BUREN,  
Deputy Clerk.

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No. 12530. United States Court of Appeals for the Ninth Circuit. Nick W. Maroosis, Appellant, vs. James G. Smyth, United States Collector of Internal Revenue, Appellee. Transcript of Record. Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed April 28, 1950.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for the Ninth Circuit.



United States Circuit Court of Appeals  
for the Ninth Circuit

No. 12530

NICK W. MAROOSIS,

Plaintiff,

vs.

JAMES G. SMYTH, United States Collector of  
Internal Revenue for the First Collection Dis-  
trict of California,

Defendant.

STATEMENT OF POINTS ON WHICH AP-  
PELLANT INTENDS TO RELY ON AP-  
PEAL

Appellant, pursuant to Division 6 of Rule 19 of the Rules of this Court, states that the following are the points on which he intends to rely on this appeal:

I.

The Court below erred in holding that whether 86 per cent (which was a voluntary estimate of the taxpayer) or 96.41 per cent (the undisputed percentage determined by an actual audit of the State Board of Equalization of the State of California) was the correct percentage of sales of distilled spirits to total sales for the period from July 1, 1943, to March 31, 1944, was not at issue in this case.

## II.

The Court below erred in holding that the testimony by appellee's witnesses of alleged suspicious acts by appellant prior to the date for taking the floor stock tax inventory required by law eliminated any need for a rational or logical basis to the arbitrary assessment of appellee.

## III.

The Court below erred in holding that the issue of this case is whether or not the appellant improperly dealt with distilled spirits prior to April 1, 1944, said latter date being the date for taking the floor stock tax inventory.

## IV.

The Court below erred in not holding that 96.41 per cent was the correct percentage of sales of distilled spirits to total sales for the period July 1, 1943, to March 31, 1944.

## V.

The Court below erred in holding that 86 per cent as the correct percentage of sales of distilled spirits to total sales for the period July 1, 1943, to March 31, 1944, was not an unreasonable figure for the appellee to use in the assessment because the appellant had given the erroneous figure to appellee's agents and that appellant is fortunate he did not give a lower percentage to appellee, for then the assessment would have been even greater.

## VI.

Notwithstanding that appellee took an actual inventory of distilled spirits on hand as of May 2, 1944, and checked the same back against purchases and sales and arrived at an inventory figure of appellant's establishment as of April 1, 1944, and notwithstanding that appellee was notified of and had available for its inspection an audit of the California State Board of Equalization which established that the appellant's correct percentage of sales of distilled spirits to total sales from July 1, 1943, to March 31, 1944, was 96.41 per cent and notwithstanding the fact that appellee was on the premises of appellant on April 1, 1944, and took spot checks of his inventory on said date and notwithstanding that appellee testified that it had the plaintiff's establishment under surveillance immediately prior to April 1, 1944, and notwithstanding that appellee's investigation of plaintiff's purchases from November 1, 1942, to March 31, 1944, disclosed that appellant's purchase records were correct and notwithstanding appellee accepted as correct for the purposes of its figures the gross sales as taken from appellant's books and records and notwithstanding that from those same records the State Board of Equalization's audit disclosed that 96.41 per cent was the correct percentage of sales of distilled spirits to total sales for the period aforementioned and finally notwithstanding that appellee failed to introduce any evidence whatsoever as to the reasonableness of his assessment, that the Court nevertheless held that the method of assess-

ment, to wit: acceptance of appellant's estimate of 86 per cent as the correct percentage of sales of distilled spirits to total sales as being the most reasonable and rational method available to the appellee is error in that the said method of the appellee had no reasonable or rational basis to it at all.

#### VII.

The Court erred in finding that on March 31, 1944, 200 cases of Three Rivers whiskey floor stock of appellant's store were moved by appellant from a warehouse to an unknown destination.

#### VIII.

The Court erred in finding that the comparison of the inventory of May 2, 1944, taken by appellee and adjusted to April 1, 1944, with plaintiff's tax return of May 1, 1944, showed a difference in over-declaration of distilled spirits by plaintiff of 108.98 proof gallons.

#### IX.

The Court erred in finding that the May 2, 1944, inventory taken by appellee did not confirm the inventory taken by appellant on April 1, 1944.

#### X.

The Court erred in disregarding the correctness of the books and records of appellant in determining the reasonableness of appellee's assessment.

#### XI.

The Court below erred in holding that appellant

failed to declare 1,222.85 proof gallons of distilled spirits, or any amount of distilled spirits, in his floor stock tax return filed on March 1, 1944.

## XII.

The Court below erred in holding that the appellant had failed to overcome by adequate evidence the presumption that the assessment levied by the defendant was accurate and proper.

## XIII.

The Court below erred in holding that the tax return filed by appellant on March 1, 1944, was false and fraudulent and made with the intent of evading the tax.

## XIV.

The Court below erred in rendering judgment in favor of appellee.

## XV.

The Court erred in failing to render and file a written opinion in this matter.

Dated this 3d day of May, 1950.

LEON SCHILLER, ESQ.,

MORRIS M. GRUPP, ESQ.,

By /s/ LEON SCHILLER,

/s/ MORRIS M. GRUPP,

Attorneys for Appellant.

[Endorsed]: Filed May 3, 1950.

[Title of Court and Cause.]

APPELLANT'S DESIGNATION OF  
RECORD ON APPEAL

To the Clerk of the Above-Entitled Court:

Appellant, pursuant to Division 6 of Rule 19 of the Rules of this Court requests that the entire transcript of the above-entitled case be printed as the transcript on appeal in the above cause.

Dated: This 3d day of May, 1950.

LEON SCHILLER, ESQ.,

MORRIS M. GRUPP, ESQ.,

By /s/ LEON SCHILLER,

/s/ MORRIS M. GRUPP,

Attorneys for Appellant.

[Endorsed]: Filed May 3, 1950.



